

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED
msap
2015 MAR 19 PM 3:16

CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

GREENBRIER HOTEL CORPORATION,
a West Virginia corporation; and THE
GREENBRIER SPORTING CLUB, INC., a
West Virginia corporation,

Plaintiffs,

v.

Civil Action No. 15-C-560
Honorable Kaufman

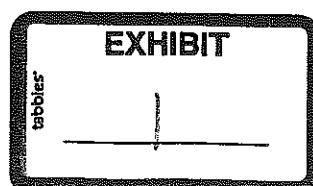
MARSH & MCLENNAN AGENCY LLC, a
limited liability company; THOMAS
RUTHERFOORD, INC., a Virginia corporation;
RUTHERFOORD INTERNATIONAL, INC.,
a Virginia corporation; RUTHERFOORD
FINANCIAL SERVICES, INC., a Virginia
corporation; RUTHERFOORD BENEFIT
SERVICES, INC., a Virginia corporation;
BENEFIT ASSISTANCE CORPORATION,
a West Virginia corporation; ROMEO
CONSULTING, INC.; and RICHARD
ROMEO,

Defendants.

COMPLAINT

Now come plaintiffs, Greenbrier Hotel Corporation and The Greenbrier Sporting Club, Inc., West Virginia corporations, and complain as follows:

1. Plaintiffs are the Greenbrier Hotel Corporation and The Greenbrier Sporting Club, Inc., (hereinafter "Greenbrier,") which are West Virginia corporations that own and operate the Greenbrier Hotel in White Sulphur Springs, Greenbrier County, West Virginia.
2. The Greenbrier employs an average of approximately 1200 employees annually which are provided various benefits including healthcare benefits for employees.
3. At all times hereinafter complained of, Thomas Rutherford, Inc., Rutherford International, Inc., Rutherford Financial Services, Inc. and Rutherford Benefits Services, Inc.,



(hereinafter "Rutherford,") were Virginia corporations engaged directly or indirectly in the business of selling insurance and employee benefit plans to individuals and businesses on a nationwide basis, including in West Virginia, and were acting for and on behalf of themselves and on behalf of defendant Marsh & McLennan Agency, LLC, (hereinafter "MMA,") as agents, servants and employees.

4. At all times complained of herein, MMA was an insurance brokerage firm which operated on a national basis, including in West Virginia in selling and managing insurance employee benefit plans.

5. MMA purchased, owned and operated Rutherford from March 2010, and advertised and continues to advertise and represent to the public that Rutherford is MMA's agency.

6. MMA is liable for its own acts and conduct and for the acts and conduct of Rutherford, its agents, servants and employees.

7. Benefit Assistance Corporation, (hereinafter "BAC,") is a West Virginia corporation which among other services, is engaged in and offers its services to employers in managing employee benefits provided to employees by said employer, including in West Virginia.

8. Richard Romeo, (hereinafter collectively referred to as "Romeo,") is an insurance broker or agent, licensed in West Virginia, who at all times complained of herein, was acting as an insurance broker and/or agent in the State of West Virginia in selling and managing insurance, including employee benefits.

9. Romeo Consulting, Inc., (hereinafter collectively referred to as "Romeo,") is a West Virginia corporation which among other services, is engaged in and offers its services to

employers in managing employee benefits provided to employees by said employer, including in West Virginia.

10. BAC, as part of its business practices, entered into agreements and contracts with insurance agencies and/or employers and other entities who may have need of a third party administrator for healthcare plans for employers and their employees and/or to provide assistance with administering healthcare plans for employees.

11. At all times complained of herein, defendants, acting as described above, offered to purchase and administer health insurance plans for entities like the Greenbrier.

12. At all times complained of, MMA offered to prepare, manage and administer healthcare plans for entities like the Greenbrier.

13. At all times complained of, defendants Romeo, Rutherford, MMA and BAC were engaged in a joint venture for the purpose of combining their services, knowledge, skill and resources for the purpose of providing insurance services to the Greenbrier, including healthcare coverages and benefits which the Greenbrier was required to pay both commissions and fees to said defendants.

14. At all times complained of herein, defendants MMA, Rutherford, Romeo and BAC were acting as agents and servants of one another in preparing, investigating, presenting and communicating with each other and plaintiffs with respect to the plaintiffs' employee benefit plans during the period 2008 to and including 2014.

15. Defendants, acting as aforesaid, set about to present and offer the Greenbrier their services to structure employer benefit plans for plaintiffs' employees including healthcare plans.

16. Defendants Marsh, Rutherford and Romeo selected and incorporated into their joint venture arrangement and, acting for and on their own behalf and on behalf of BAC, said

defendants presented an overall plan and proposal whereby Marsh, Rutherford, Romeo and BAC would assemble, present and manage and control the Greenbrier's employee benefit plan described above which agreement provided for all defendants to be paid for their services.

17. The Greenbrier accepted the offer and on or about January 2010, said defendants, acting as described above, undertook that responsibility for the Greenbrier's non-union employees.

18. Between late 2012 and February 2013, Marsh, Rutherford, BAC and Romeo, acting on behalf of each other and as joint venturers, claimed, represented and promised the Greenbrier that they could and would manage their employees' benefit plan such that the costs would not exceed the cost of the plan plaintiffs currently had for their non-union plan.

19. Rutherford (Marsh) represented to the public and the plaintiffs that it was knowledgeable concerning employee benefit plans, including the best choices with respect to the manner of obtaining and providing benefits to employees of businesses like the Greenbrier and that it had the experience, resources, service and strategic approach including a proactive management plan.

20. MMA represented to the public that it was a subsidiary of Marsh Inc., the world's leading insurance broker. MMA represented it was the country's 13th largest insurance agency.

21. Between late 2012 and February 2013, defendants, acting by and through their agents, servants, employees and joint venturers, promised that they could provide a plan that would improve their employee benefits and if plaintiffs agreed to accept their proposal to enter into a specific self-funded plan that defendants had prepared and presented to plaintiffs, that plaintiffs' insurance costs would not exceed the costs they were currently paying for their benefits.

22. In reliance upon said defendants' promises and assurances, acting as aforesaid, plaintiffs accepted defendants' proposal and agreed to pay defendants for their services and to enter into the self-funded benefit plan as proposed by defendants.

23. Rutherford and Marsh agreed to and did act, for and on behalf of all defendants, including Romeo and BAC to choose, oversee and manage the plan and undertook the responsibility of in corresponding and informing plaintiffs of issues related thereto, including coordinating and communicating with plaintiffs and the other defendants concerning the costs of the plan to plaintiffs.

24. Each defendant, acting for and on behalf of itself and each other, had the duty and responsibility to investigate and review the benefits, claims, costs, network fees, discounts and to overall provide professional management of the plan as they agreed to do and represented they had the ability to do.

25. Each defendant, acting for and on behalf of itself and each other, had the duty and responsibility to provide plaintiffs accurate information concerning the cost of the employee benefit plan.

26. Defendants and each of them had the duty and responsibility to inform plaintiffs concerning the actual costs of the employee benefit plan.

27. Marsh, Rutherford and Romeo defendants had the duty and responsibility to review the claim costs, network costs, reinsurance costs and expenses and act on the information to determine whether plaintiffs' costs and expenses were excessive or exceeded the costs and expenses of their previous union plan, inasmuch as the defendants represented that it would not exceed that amount and if so, said defendants had the duty to immediately act and to correct the reasons for the excessive costs.

28. Acting as set forth above, defendants and each of them deviated from the standard of care of an ordinary, reasonable prudent manager, consultant and provider in their consultation, management and administration, broker and/or agent in recommending, in the management and administration of the aforesaid employee benefits plan.

29. Contrary to their duties and responsibilities, their agreement and contract, defendants negligently and carelessly administered the plan and as a proximate result of same, plaintiffs' costs substantially exceeded the cost of the plaintiffs' previous plan and plaintiffs were damaged thereby.

30. The above complaint and allegations as to plaintiffs' damages did not and do not affect the plan or benefits from said plan as the complaint is that defendants' negligence caused plaintiffs' damages which they were required to pay to or for the benefit of their plan which otherwise they would not have been required to pay. Further, the plan subject in this action was terminated on or about December 31, 2013.

COUNT I

26. Plaintiffs re-allege the above allegations and further complain and say as follows:

27. Defendants Marsh, Rutherford and Romeo, acting as aforesaid, undertook the responsibility to recommend, set up, organize and oversee, manage and communicate to the Greenbrier as to matters pertaining to the management of the employee benefit plan and assurances that the plan was being properly administered within the representations as to the cost thereof.

28. All defendants deviated from the standards of an ordinary, reasonable prudent consultant, broker, plan administrator and manager in that they negligently recommended and advised plaintiffs to enter into the plan, negligently supervised and managed the plan, negligently

administered the plan in a manner that caused the cost to the plaintiffs to be unreasonably excessive as to plaintiffs due to network selection, administration and placement of same.

29. As a proximate result of the aforesaid negligent acts, omissions and conduct, plaintiffs were damaged in that the negligence caused the healthcare costs to be unnecessarily substantially higher than the amount which defendants represented they would be for the same benefit to the employees and they were required to expend time and money to correct the payment of funds to providers and others and they lost the use of money paid, were required to pay money for benefits that should have been paid by re-insurance due to defendants' negligence and were otherwise damaged.

COUNT II

33. Plaintiffs re-allege each of the above allegations and further complain and state as follows:

34. Defendants and each of them, acting in the manner and method aforesaid, for and on behalf of themselves and as agents, servants and employee and joint venturers of the other, made a contractual offer to plaintiffs to recommend and manage and administer their employee benefit plans for a cost not to exceed the cost of their former employee benefit plan.

35. Defendants represented that they would monitor, review, administer and manage said benefit plan in a reasonable and proper manner.

36. Plaintiffs agreed to accept defendants' proposed contract and plaintiffs' undertook to fund and did fund the same.

37. Defendants breached said contract by failing to recommend, administer and manage same in a good and workmanlike manner, according to the standard of the industry or pursuant to their contractual duties and responsibilities to plaintiffs.

38. As a proximate result of said breach of contractual responsibilities, the plaintiffs were damaged as aforesaid.

COUNT III

39. For their third count, plaintiffs re-allege the above allegations and further complain and say as follows:

40. Defendants negligently and /or carelessly or intentionally represented the above plan to plaintiffs and advised them that the cost would not be more than the previous plan cost and that plaintiffs would realize a substantial savings to plaintiffs when they knew or should have known that the costs could or would be more based upon the manner defendants intended to administer and manage same.

41. Defendants represented that they would supervise, administer and manage plaintiffs' plan and communicate with plaintiffs the status and make appropriate recommendations as to changes which should be made.

42. Plaintiffs relied upon defendants' representations and agreed to accept the proposal and purchased defendants' services, paid them for said services and adopted the plan recommended.

43. As a proximate result of defendants' representations and plaintiffs' reliance thereon, plaintiffs incurred substantial excessive costs above and beyond the cost of their previous plan.

44. Had plaintiffs been advised of the true costs of the defendants' proposed plan, plaintiffs would not have agreed to undertake same.

45. Defendants made material representations and omissions to plaintiffs pertaining to the structure and costs of the benefit plan with the purpose of inducing plaintiffs into agreeing to accept their proposal.

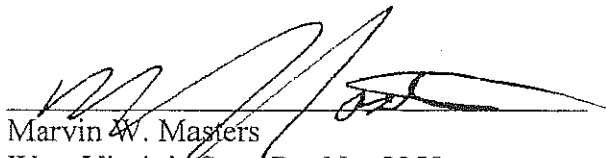
46. As set forth above, plaintiffs were induced to enter into the agreement pursuant to the above representations and as a proximate result thereof was damaged as set forth above.

Wherefore, plaintiffs demand of and against defendants and each of them, jointly and severally, for their compensatory damages, interest both prejudgment and post judgment, their attorney fees and costs and for such other, further general relief as the Court deems just and proper.

Plaintiffs demand a trial by jury.

GREENBRIER HOTEL CORPORATION,
a West Virginia corporation; and THE
GREENBRIER SPORTING CLUB, INC., a
West Virginia corporation,

By Counsel



Marvin W. Masters
West Virginia State Bar No. 2359
The Masters Law Firm lc
181 Summers Street
Charleston, West Virginia 25301
(304) 342-3106
Counsel for Plaintiffs