

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

JACE BOSTON, LLC and ARTHUR LEON,

Plaintiffs,

v.

LANDMARK AMERICAN INSURANCE CO.,  
AMERICAN SAFETY INDEMNITY CO.,  
FIRST MERCURY INSURANCE CO., and  
NAVIGATORS SPECIALTY INSURANCE CO.,

Defendants.

Civil Action No. 21. 1056 g

**COMPLAINT AND JURY DEMAND**

**i. Introduction**

1. This is an insurance coverage dispute in which Plaintiffs JACE Boston, LLC ("Jace") and Arthur Leon ("Mr. Leon") (together, Jace and Mr. Leon, "Plaintiffs") are insureds on occurrence-based commercial general liability policies with each of the named defendants. The policies all include 'personal and advertising injury' coverage. After Plaintiffs were sued for alleged abuses of process and violations of G.L. c. 93A, § 11, each of the named insurers denied them coverage, refusing to provide a defense or indemnification against these claims.

2. Plaintiffs have now expended significant sums in defense costs alone and are awaiting a trial date to exonerate themselves. They are being sued in the underlying litigation for millions of dollars in damages although Plaintiffs contend that the claims asserted against them are without merit. Despite all premiums being paid, the named defendants have all failed to fulfill their contractual obligations to Plaintiffs.

3. By and through this action, Plaintiffs seek a declaration that the named defendants have breached their insurance contracts with Plaintiffs in failing to tender a defense and provide indemnification in the underlying litigation. So too, Plaintiffs seek an award of damages consistent with the harm they have suffered, and continue to suffer, arising from the defendants' breaches of contract.

**ii. Parties**

4. Jace is a Massachusetts limited liability company with a principal place of business in Boston, Suffolk County, Massachusetts. Jace's manager is Mr. Leon.

5. Mr. Leon is an individual and a resident of Westwood, Norfolk County, Massachusetts. In addition to being Jace's manager, Mr. Leon is an officer and director of American Crane & Hoist Corporation ("AC&H").

6. Upon information and belief, Defendant Landmark American Insurance Company ("Landmark") is a Colorado insurance corporation with a principal place of business in the State of Colorado.

7. Upon information and belief, Defendant American Safety Indemnity Company ("American Safety") is a Georgia insurance corporation with a principal place of business in the State of Georgia.

8. Upon information and belief, Defendant First Mercury Insurance Company ("First Mercury") is an Illinois insurance corporation with a principal place of business in the State of Michigan.

9. Upon information and belief, Defendant Navigators Specialty Insurance Company ("Navigators") is New York insurance corporation with a principal place of business in the State of New York.

### **iii. Jurisdiction and Venue**

10. This Court has jurisdiction over this matter pursuant to, among other statutory provisions, G.L. c. 212, § 4, and G.L. c. 231A, §§ 1-2.

11. Venue is proper in this Court pursuant to G.L. c. 223, §§ 1, 8, as Jace has its usual place of business in Suffolk County.

### **iv. Background**

#### **A. The Policies at Issue.**

12. Landmark issued an occurrence-based commercial general liability insurance policy to AC&H for the policy period from January 1, 2012 to January 1, 2013 (the “2012 Landmark Policy”). A copy of the 2012 Landmark Policy is attached hereto as **Exhibit A**. Jace is an additional named insured under the 2012 Landmark Policy, and Mr. Leon falls within the policy’s definition of insured by virtue of his being an officer of AC&H and Jace’s manager.

13. Pursuant to the 2012 Landmark Policy, Landmark agreed to provide ‘personal and advertising injury’ coverage to its insured and related companies and individuals, including Plaintiffs. *See* Ex. A at pp. 14-15. The 2012 Landmark Policy’s definition of ‘personal and advertising injury’ expressly includes “Malicious prosecution.” *Id.* at p. 23.

14. American Safety issued an occurrence-based commercial general insurance liability policy to AC&H for the policy period from January 1, 2013 to January 1, 2014 (the “2013 American Safety Policy”). A copy of the 2013 American Safety Policy is attached hereto as **Exhibit B**. Jace is an additional named insured under the 2013 American Safety Policy, and Mr. Leon falls within the policy’s definition of insured by virtue of his being an officer of AC&H and Jace’s manager.

15. Pursuant to the 2013 American Safety Policy, American Safety agreed to provide ‘personal and advertising injury’ coverage to its insured and related companies and individuals, including Plaintiffs. *See* Ex. B at pp. 13-14. The 2013 American Safety Policy’s definition of ‘personal and advertising injury’ expressly includes “Malicious prosecution.” *Id.* at p. 22.

16. First Mercury issued an occurrence-based commercial general liability insurance policy to AC&H for the policy period from January 1, 2014 to January 1, 2015 (the “2014 First Mercury Policy”). A copy of the 2014 First Mercury Policy is attached hereto as **Exhibit C**. Jace is an additional named insured under the 2014 First Mercury Policy, and Mr. Leon falls within the policy’s definition of insured by virtue of his being an officer of AC&H and Jace’s manager.

17. Pursuant to the 2014 First Mercury Policy, First Mercury agreed to provide ‘personal and advertising injury’ coverage to its insured and related companies and individuals, including Plaintiffs. *See* Ex. C at p. 10. The 2014 First Mercury Policy’s definition of ‘personal and advertising injury’ expressly includes “Malicious prosecution.” *Id.* at p. 18.

18. Navigators issued an occurrence-based commercial general liability insurance policy to AC&H for the policy period from January 1, 2015 to January 1, 2016 (the “2015 Navigators Policy”). A copy of the 2015 Navigators Policy is attached hereto as **Exhibit D**. Jace is an additional named insured under the 2015 Navigators Policy, and Mr. Leon falls within the policy’s definition of insured by virtue of his being an officer of AC&H and Jace’s manager.

19. Pursuant to the 2015 Navigators Policy, Navigators agreed to provide ‘personal and advertising injury’ coverage to its insured and related companies and individuals, including Plaintiffs. *See* Ex. D at p. 19. The 2015 Navigators Policy’s definition of ‘personal and advertising injury’ expressly includes “Malicious prosecution.” *Id.* at p. 27.

20. In relevant part, all four policies at issue in this dispute – (a) the 2012 Landmark Policy, (b) the 2013 American Safety Policy, (c) the 2014 First Mercury Policy, and (d) the 2015 Navigators Policy – are materially the same. The policies obligate each insurer to provide a defense to Plaintiffs and indemnify them for a claimed ‘personal and advertising injury’ such as a ‘malicious prosecution’ claim during their respective policy periods.

21. The meaning of the term ‘malicious prosecution’ as used in each of these policies is ambiguous under Massachusetts law. Any reasonable insured – including Plaintiffs – would understand it to include a claim for the companion common law tort of abuse of process. Both torts guard against vexatious litigation. And both can be premised on underlying civil claims.

**B. The Defendants’ Breach Their Insurance Contracts with Plaintiffs by Refusing to Provide Them with a Defense or to Indemnify Them on an Abuse of Process Claim During the Relevant Policy Periods.**

22. On or about March 23, 2015, 477 Harrison Ave., LLC (“477”) commenced a lawsuit in the Suffolk County Superior Court entitled *477 Harrison Ave., LLC v. JACE Boston, LLC and Arthur Leon*, Civil Action No. 1584CV000829 (the “Underlying Litigation”).

23. 477 filed a *Complaint and Jury Demand* in the Underlying Litigation (“477’s Complaint”). A copy of 477’s Complaint, without its exhibits, is attached hereto as **Exhibit E**.

24. In 477’s Complaint, 477 asserts a claim for abuse of process against Plaintiffs, and a companion claim for violation of G.L. c. 93A, § 11, based on the following three events:

- a. Jace’s filing of an appeal of zoning relief granted to 477 in a Suffolk County Superior Court lawsuit entitled *JACE Boston, LLC v. City of Boston Zoning Board of Appeal et al.*, Civil Action No. 1284CV03241, on or about August 29, 2012 (the “2012 Zoning Appeal”), *see* 477’s Complaint at ¶ 47;
- b. Jace’s filing of a declaratory judgment action against 477 in a Suffolk County Superior Court lawsuit entitled *JACE Boston, LLC v. Holland Development LLC et al.*, Civil Action No. 1384CV02167, on or about June 13, 2013 (the “2013 Declaratory Judgment Action”), *see* 477’s Complaint at ¶ 60; and

- c. Mr. Leon's filing of an application for a criminal trespass complaint against 477's principal on or about December 8, 2014 (the "2014 Application for a Criminal Complaint"), *see* 477's Complaint at ¶¶ 99-100.

25. 477 later filed an *Amended Complaint and Jury Demand* in the Underlying Litigation ("477's Amended Complaint"). A copy of 477's Amended Complaint is attached hereto as **Exhibit F**.

26. In 477's Amended Complaint, in addition to the claims asserted in 477's Complaint, 477 also asserted a claim for abuse of process against Plaintiffs, and a companion claim for violation of G.L. c. 93A, § 11, based on Jace's filing of an appeal of zoning relief granted to 477 in a Suffolk County Superior Court lawsuit entitled *JACE Boston, LLC v. City of Boston Zoning Board of Appeal et al.*, Civil Action No. 1584CV01585, on or about May 28, 2015 (the "2015 Zoning Appeal"), *see* 477's Amended Complaint at ¶ 115.

27. Plaintiffs deny that any of the process that they initiated against 477 or its affiliates constituted an abuse of process or unfair or deceptive conduct within the meaning of G.L. c. 93A, § 2.

28. Plaintiffs notified Landmark of the Underlying Litigation, including 477's claim that the filing of the 2012 Zoning Appeal constituted an abuse of process. To date, Landmark has refused to provide a defense to Plaintiffs or to indemnify them under the 2012 Landmark Policy. A copy of Landmark's denial notice is attached hereto as **Exhibit G**.

29. Plaintiffs notified American Safety of the Underlying Litigation, including 477's claim that the filing of the 2013 Declaratory Judgment Action constituted an abuse of process. To date, American Safety has refused to provide a defense to Plaintiffs or to indemnify them under the 2013 American Safety Policy.

30. Plaintiffs notified First Mercury of the Underlying Litigation, including 477's claim that the 2014 Application for a Criminal Complaint constituted an abuse of process. To

date, First Mercury has refused to provide a defense to Plaintiffs or to indemnify them under the 2014 First Mercury Policy. A copy of a denial notice sent on behalf of both American Safety and First Mercury is attached hereto as **Exhibit H**.

31. Plaintiffs notified Navigators of the Underlying Litigation, including 477's claim that the 2015 Zoning Appeal constituted an abuse of process. To date, Navigators has refused to provide a defense to Plaintiffs or to indemnify them under the 2015 Navigators Policy. A copy of Navigators' denial notice is attached hereto as **Exhibit I**.

32. With Landmark, American Safety, First Mercury and Navigators all refusing to provide coverage despite contractually being obligated to do so, Plaintiffs have been forced to defend themselves in the Underlying Litigation. They have spent, and continue to spend, significant amounts in defense costs alone and are awaiting a trial date to exonerate themselves. To this day, 477 is pursuing millions of dollars of damages from Plaintiffs based on these claims in the Underlying Litigation although Plaintiffs contend that the claims asserted against them are without merit.

#### **Count I – Declaratory Judgment**

33. Plaintiffs repeat and re-allege the allegations set forth above.

34. An actual controversy exists between Plaintiffs and each of the named defendants within the meaning of G.L. c. 231A as to whether each of them has a duty to defend and a duty to indemnify Plaintiffs in the Underlying Litigation based on their respective policies' coverage for 'personal and advertising injury' including for a 'malicious prosecution' claim like 477 has asserted against them.

35. Pursuant to G.L. c. 231A, §§ 1-2, Plaintiffs respectfully request that this Court declare the rights of the parties, specifically that (a) Landmark has a duty to defend and a duty to

indemnify Plaintiffs in the Underlying Litigation under the 2012 Landmark Policy, (b) American Safety has a duty to defend and a duty to indemnify Plaintiffs in the Underlying Litigation under the 2013 American Safety Policy, (c) First Mercury has a duty to defend and a duty to indemnify Plaintiffs in the Underlying Litigation under the 2014 First Mercury Policy, and (d) Navigators has a duty to defend and a duty to indemnify Plaintiffs in the Underlying Litigation under the 2015 Navigators Policy.

### **Count II – Breach of Contract**

36. Plaintiffs repeat and re-allege the allegations set forth above.

37. The 2012 Landmark Policy is a binding contract between Landmark and Plaintiffs. Plaintiffs were ready, willing and able to perform, and have in fact performed, under the 2012 Landmark Policy. Landmark has breached the 2012 Landmark Policy by failing to provide a defense or indemnification to Jace and Mr. Leon. As a result of Landmark's breach of contract, Plaintiffs have suffered, and continues to suffer, significant damages.

38. The 2013 American Safety Policy is a binding contract between American Safety and Plaintiffs. Plaintiffs were ready, willing and able to perform, and have in fact performed, under the 2013 American Safety Policy. American Safety has breached the 2013 American Safety Policy by failing to provide a defense or indemnification to Jace and Mr. Leon. As a result of American Safety's breach of contract, Plaintiffs have suffered, and continues to suffer, significant damages.

39. The 2014 First Mercury Policy is a binding contract between First Mercury and Plaintiffs. Plaintiffs were ready, willing and able to perform, and have in fact performed, under the 2014 First Mercury Policy. First Mercury has breached the 2014 First Mercury Policy by failing to provide a defense or indemnification to Jace and Mr. Leon. As a result of First



Mercury's breach of contract, Plaintiffs have suffered, and continues to suffer, significant damages.

40. The 2015 Navigators Policy is a binding contract between Navigators and Plaintiffs. Plaintiffs were ready, willing and able to perform, and have in fact performed, under the 2015 Navigators Policy. Navigators has breached the 2015 Navigators Policy by failing to provide a defense or indemnification to Jace and Mr. Leon. As a result of Navigators' breach of contract, Plaintiffs have suffered, and continues to suffer, significant damages.

WHEREFORE, Plaintiffs respectfully requests that this Court grant it the following relief on this Complaint and Jury Demand:

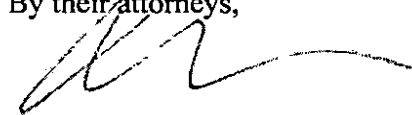
- A. On Count I, declare the rights of the parties, specifically that (a) Landmark has a duty to defend and a duty to indemnify Plaintiffs in the Underlying Litigation under the 2012 Landmark Policy, (b) American Safety has a duty to defend and a duty to indemnify Plaintiffs in the Underlying Litigation under the 2013 American Safety Policy, (c) First Mercury has a duty to defend and a duty to indemnify Plaintiffs in the Underlying Litigation under the 2014 First Mercury Policy, and (d) Navigators has a duty to defend and a duty to indemnify Plaintiffs in the Underlying Litigation under the 2015 Navigators Policy;
- B. On Count II, find in favor of Plaintiffs, and against each of the named defendants, and award Plaintiffs their monetary damages, pre-judgment interest from the date of breach, and costs; and
- C. Grant such other and further relief as this Court deems equitable and just.

**Jury Demand**

Plaintiffs hereby demand a jury on all claims and issues so triable.

Respectfully submitted,

JACE BOSTON, LLC AND ARTHUR LEON,  
By their attorneys,



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