

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.:

PRIVILEGE UNDERWRITERS RECIPROCAL
EXCHANGE d/b/a PURE INSURANCE,
a Florida corporation,

Plaintiff,

v.

THE HANOVER INSURANCE GROUP, d/b/a
MASSACHUSETTS BAY INSURANCE
COMPANY, a Massachusetts company,

Defendant.

COMPLAINT

Plaintiff, Privilege Underwriters Reciprocal Exchange d/b/a PURE Insurance (“PURE”),
sues Defendant, The Hanover Insurance Group, d/b/a Massachusetts Bay Insurance Company
 (“Hanover”) and alleges as follows:

Parties, Jurisdiction and Venue

1. This is an action for damages in excess of \$75,000 exclusive of interest,
attorneys’ fees and costs.

2. Plaintiff, Privilege Underwriters Reciprocal Exchange d/b/a PURE Insurance, is
an insurance company organized under and incorporated in the State of Florida, with its principal
place of business located in Fort Lauderdale, Florida.

3. Defendant, The Hanover Insurance Group, d/b/a Massachusetts Bay Insurance
Company is an insurance company organized under and incorporated in the State of New
Hampshire, with its principal place of business located in Massachusetts.

4. This Court has jurisdiction pursuant to 28 USC § 1332 because the parties are
diverse and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

5. Venue is proper in this judicial district as the underlying acts giving rise to the underlying action occurred in Broward County, Florida.

General Allegations

6. PURE issued a Homeowners Insurance policy to Alan M. Dershowitz (“Dershowitz”) bearing policy number HO023861902, covering policy period September 1, 2014 through September 1, 2015, with limits of \$500,000 per occurrence (the “PURE Policy”). A copy of the PURE Policy is attached as Exhibit A.

7. Hanover issued a Business Owners Insurance policy to Dershowitz bearing policy number ODN-9000110 and covering policy period April 9, 2014 through April 9, 2015 (the “Hanover Policy”). The Hanover Policy has limits of \$1,000,000 per occurrence/\$2,000,000 aggregate. During the course of the Underlying Lawsuit, PURE requested, on multiple occasions, that Hanover provide a copy of the applicable Hanover Policy. Hanover ultimately only provided a copy of the renewal Hanover Policy, which is attached as Exhibit B. Upon information and belief, the policy language in the renewal Hanover Policy is identical to the applicable Hanover Policy.

8. On January 6, 2015, Dershowitz was sued in the lawsuit styled *Bradley J. Edwards, et al. v. Alan M. Dershowitz*, Case No. CACE 15-000072, Circuit Court, Broward County, Florida (the “Underlying Lawsuit”).

9. The Underlying Lawsuit was a high profile case against a public figure, alleging defamation claims against Dershowitz by attorneys Bradley J. Edwards and Paul G. Cassell relating to their litigation against Jeffrey Epstein.

10. PURE and Hanover participated in the defense and eventual settlement of the Underlying Lawsuit, which was completed on April 4, 2016.

11. During the course of the Underlying Lawsuit, PURE requested, on multiple occasions, that Hanover provide a copy of the Hanover Policy. Among other things, PURE needed to confirm whether the PURE policy was excess or pro rata with respect to the Underlying Lawsuit.

12. Eventually, in the early part of 2016, as the parties in the Underlying Lawsuit engaged in settlement discussions, the need for the Hanover Policy became increasingly more urgent. Despite PURE's repeated requests, Hanover did not provide a copy of any Policy until February 26, 2016, after the parties had agreed to the principle terms of a settlement agreement, including the amount of the settlement.¹ Hanover then provided a copy of the Hanover renewal policy. The settlement agreement was confirmed three weeks after Hanover provided a copy of the renewal Hanover Policy to PURE.

13. Due to the high profile nature of the Underlying Lawsuit, it was essential and in the best interests of the parties' shared insured (Dershowitz), to finalize the settlement of the Underlying Lawsuit as soon as possible. Therefore, PURE paid a portion of the defense costs incurred in the Underlying Lawsuit as well as a portion of the settlement amount.

14. Immediately upon receiving confirmation that the settlement was moving forward, PURE began to investigate its rights in relation to its excess carrier status in relation to this claim.

15. PURE contacted the responsible Hanover adjuster repeatedly to discuss this matter repeatedly. PURE wrote Hanover on May 24, 2016 asserting PURE's status as an excess carrier. Hanover was unable or unwilling to set a conference to discuss this position. A copy of the May 24, 2016 letter from PURE to Hanover is attached as Exhibit C.

¹ Aside from PURE and Hanover, another carrier also participated in the defense and settlement of the Underlying Lawsuit.

16. In response to a late received voice mail message from Hanover, PURE again wrote Hanover on July 6, 2016 further explaining PURE's position. Hanover has provided no response to PURE's July 6, 2016 correspondence. A copy of the July 6, 2016 letter from PURE to Hanover is attached as Exhibit D.

Relevant Policy Provisions

17. Based on the express language of the policies, the Hanover Policy is primary and the PURE Policy is excess with respect to the Underlying Lawsuit.

18. The PURE policy provides:

N. Other Insurance and Service Agreement

2. Any coverage under **SECTION III – LIABILITY COVERAGE** will be excess over other valid and collectible insurance except insurance written specifically to cover as excess over the limits of liability that apply in this policy.

19. The Hanover policy provides:

H. Other Insurance

2. SECTION II – LIABILITY

If other valid and collectible insurance is available to the insured for a loss we cover under **SECTION II – LIABILITY**, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **c.** below.

b. Excess Insurance

This insurance is excess over:

1) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(b) That is Fire Insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

(d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to **Exclusion g. Aircraft, Auto or Watercraft** of [sic]

2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

20. Because the Hanover Policy is primary and the PURE Policy is excess with respect to the Underlying Lawsuit, PURE is entitled to recover all monies paid relating to the defense and indemnity of the Underlying Lawsuit.

21. Additionally, PURE is entitled to recover all damages it sustained, including recovery of its attorneys' fees and costs, as a result of Hanover's refusal to reimburse PURE for all monies PURE paid relating to the defense and indemnity of the Underlying Lawsuit.

22. Prior to the commencement of this action, PURE sought reimbursement from Hanover for all monies PURE paid relating to the defense and indemnity of the Underlying

Lawsuit, but Hanover has refused to provide such reimbursement.

Count I
Equitable Subrogation

23. PURE incorporates its allegations from paragraphs 1 through 22.

24. PURE made payments toward the defense and indemnity relating to the Underlying Lawsuit that Hanover was legally responsible for paying.

25. PURE made these payments to protect its own interests and the interests of the parties' shared insured, Dershowitz.

26. PURE did not act as a volunteer in making these payments.

27. As the excess carrier, PURE was not liable for making these payments.

28. It would be inequitable for PURE to make payments that Hanover was legally responsible for paying without requiring Hanover to reimburse PURE for such payments.

29. Reimbursement to PURE from Hanover of the payments PURE made relating to the defense and indemnity of the Underlying Lawsuit would work no injustice of a third party.

WHEREFORE, Plaintiff, Privilege Underwriters Reciprocal Exchange d/b/a PURE Insurance, respectfully requests that this Court enter a Judgment in favor of Plaintiff and against Defendant, The Hanover Insurance Group, d/b/a Massachusetts Bay Insurance Company, for damages, including all monies PURE paid relating to the defense and indemnity of the Underlying Lawsuit, Plaintiff's attorneys' fees and costs incurred as a result of Hanover's refusal to reimburse PURE for all monies PURE paid relating to the defense and indemnity of the Underlying Lawsuit, along with such other relief as this Court deems necessary, just and proper.

Dated: July 21, 2016.

Respectfully submitted,

COZEN O'CONNOR

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