

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

SMR HOSPITALITY III, LLC d/b/a
Spartanburg Marriott

Plaintiff,

vs.

Robert J. Provost, individually; Jason Provost,
individually; The Provost Family Revocable
Trust; and Provost Associates, LLC

Defendants.

CA NO.

COMPLAINT

COME NOW the Plaintiffs, SMR HOSPITALITY III, LLC d/b/a Spartanburg Marriott, by and through their attorneys undersigned, and for their Complaint against the Defendants allege:

1. The Plaintiff SMR HOSPITALITY III, LLC d/b/a Spartanburg Marriott (“Spartanburg Marriott”) is a South Carolina corporation with its principal place of business in Spartanburg, South Carolina.
2. The Defendant, Robert J. Provost, individually; Jason Provost, individually; The Provost Family Revocable Trust; and Provost Associates, LLC, are individuals and entities that upon information and belief reside and/or are incorporated in the state of Arizona. The Defendants negotiated and bound insurance coverage for the Plaintiff’s property in Spartanburg, South Carolina and provided insurance-related services for the property in Spartanburg South Carolina.
3. Jurisdiction is proper in this Court under 28 U.S. Code § 1332 as there is diversity of citizenship among the parties and the amount in controversy exceeds \$75,000.00.
4. Venue in this Court is proper under 28 U.S.C. § 1391 (b)(2) as a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

FOR A FIRST CAUSE OF ACTION
NEGLIGENCE, GROSS NEGLIGENCE, RECKLESSNESS

5. The foregoing paragraphs are incorporated by reference as if fully restated herein.
6. This is a professional malpractice claim to recover damages arising out of the negligent acts and omissions of the agents and employees of an insurance producer, Provost Associates, LLC. The allegations and facts supporting those allegations are that Provost has not properly submitted claims for pandemic loss on behalf of Spartanburg Marriott under policies of insurance that Provost negotiated and bound. More specifically, FM Global Property Policy No. 1065552 for policy period April 2020-April 2021(hereinafter “The 2020 Policy”) and FM Global Property Policy No. 1052608 policy period April 2019-April 2020 (hereinafter “The 2019 Policy”). Moreover, Provost did not properly negotiate the communicable disease and other available coverage in the 2020 policy resulting in nearly \$1,000,000 less communicable disease coverage at a higher premium cost to Plaintiffs. Finally, Provost has not and did not effectively communicate the options to Spartanburg Marriott for communicable disease and other relevant coverage available through the relevant time periods.
7. At all pertinent times, an insurance producer/client relationship existed between Spartanburg Marriott and Defendants Provost. Defendants held themselves out to the public, and to Spartanburg Marriott, as possessing special knowledge, skill or expertise in the field of insurance. At all pertinent times hereto, Defendants owed duties alleged herein to Spartanburg Marriott and specifically undertook to perform insurance producer services alleged herein.
8. Defendants expressly, or impliedly, induced Spartanburg Marriott to reasonably rely on their performance or professional services alleged herein. Defendants owed duties to Spartanburg Marriott to act with reasonable care, skill and diligence. Defendants breached their duties of reasonable care, skill and diligence owed to Spartanburg Marriott. Defendants were negligent, in that they failed to exercise reasonable care, skill and diligence in carrying out their duties in procuring and securing insurance. Without limitation, Defendants were negligent in failing to advise Spartanburg Marriott about the insurance they needed. As a direct and proximate cause of

Defendants' breaches and negligence, Spartanburg Marriott suffered damages, including loss of income. Upon information and belief, Defendants Provost were obligated to know and understand the business of the party for which coverage is sought. Spartanburg Marriott's 2019 policy provided communicable disease coverage, which was critical to the business of Spartanburg Marriott and certainly was known to Provost at the time of renewal in April 2020. The renewal of the communicable disease coverage was at a higher premium with nearly \$1,000,000.00 less coverage for 2020. Spartanburg Marriott was not informed by Provost of this radical departure from critical coverage when presented with the new policy even though the insured had asked for the same coverage and Provost had represented that it would obtain such coverage.

9. Spartanburg Marriott's owners only learned that there was a change in policies and possible change in coverage at the time of the policy review after the claims for coverage were filed. Provost concealed the fact that they had failed to obtain an appropriate policy and chose not to tell Spartanburg Marriott that its critical coverages had changed. Defendants' staff's actions are imputed on Defendants, thus Defendants' attempt to conceal its responsibility is evidence of gross negligence or recklessness and a culpable state of mind. The foregoing conduct by Defendants evidences a conscious disregard of a known risk of harm to Spartanburg Marriott and its owners justifying an award of punitive damages in an amount to be determined at the time of trial.
10. Provost and its employees, agents, brokers and marketers fell below the standard of care for insurance producers in the following particulars:
 - a.) When Provost renewed its coverage for Spartanburg Marriott it had an obligation to ensure that the coverage was at least as good as the existing insurance and would properly replace the existing insurance, particularly given the increased premium. It is below the standard of care for an

insurance producer to produce a binder that is below the coverage in the prior year policy in a material way and also issued a higher premium.

- b.) Provost should have explained to its client in an effective and understandable manner the available options and what would and would not be covered through the Covid-19 pandemic.
- c.) Provost represented that the 2020 insurance policy was as good or better than the 2019 policy (or misrepresented by omission to disclaim such authority). Provost did not explain to its client that there was a significant reduction in important coverage with an increase in premium.
- d.) Provost's sales presentation did not include a disclosure that Spartanburg Marriott was not covered for indemnity at least as good as that provided by the replaced policy.
- e.) Provost knew that Spartanburg Marriott was suffering greatly from the Covid-19 pandemic and would need to use any related coverage.
- f.) Provost never advised anyone at Spartanburg Marriott that there was nearly a \$1,000,000.00 decrease in related coverage and that the policy was issued at a higher premium.
- g.) The producers should have explained to their clients, in an effective and understandable manner known to gain the attention and understanding of the clients that communicable disease coverage was available in the marketplace and undertaken a cost benefit analysis of such coverage.
- h.) Omitting important coverages for liability risks presents business insurance with gaps. When such gaps in coverage occur, it is required that the producer communicate to its client-insured in a manner that is known to gain the

attention and understanding of the client-insured that the insurance procured is substandard.

- i.) Omitting important coverages for liability and other business risks are circumstantial evidence that Provost purposefully omitted some coverages so that it could “beat” the premium charged by the predecessor insurer or a known or unknown competitor’s proposal to insure Spartanburg Marriott. If such is proven to be true by clear and convincing evidence, it would show that Provost acted with an “evil mind” rather than simply being negligent. It is fundamentally false and deceptive to replace existing insurance coverages with insurance that omits important coverage or utilizes deceptive or misleading statements including uttering a falsehood by omission. This is known in the insurance industry as “twisting.” It is also a violation of South Carolina’s Unfair Trade Practices Act (the “Act”), S.C. Code Ann. §39-5-10, et seq. It also appears to be a consumer fraud as well as an artifice to defraud.
- j.) The producers should have but did not explain to their client, Spartanburg Marriott in an effective and understandable manner known to gain the attention and understanding of the client that communicable disease and business interruption coverage was an important coverage for Spartanburg Marriott to have but that, unlike the previous policy Provost replaced, the 2020 Policy excluded nearly all coverage for Spartanburg Marriott for communicable disease interruption claims.
- k.) Provost should have explained to its client, Spartanburg Marriott, in an effective and understandable manner known to gain the attention and

understanding of the clients that it is a really good idea (*i.e.* strongly recommended) that Spartanburg Marriott purchase communicable disease and/or pandemic business interruption coverage from an insurance company in sufficient amounts and without exclusions, limitations or conditions in the policy that took away coverage.

- l.) Provost should have explained to their clients, in an effective and understandable manner known to gain the attention and understanding of the clients that not having communicable disease and/or pandemic business interruption coverage would expose Spartanburg Marriott to the needless risk of loss that was covered in the year prior.
- m.) Provost should have explained to its clients, in an effective and understandable manner known to gain the attention and understanding of the clients that communicable disease and/or pandemic business interruption coverage is an available Insurance coverage in the competitive market place.
- n.) The standards of care set forth in this affidavit should be followed and communicated not only when insurance is placed but also when the producer has any personal contact with its client or once a year whichever is a shorter period of time. The producer should have conducted at least an annual review of all insurance sold to Spartanburg Marriott. This is usually done at or near the anniversary date of the policies. It is an opportunity for the producer to learn of changes in the client's insurable risks. This review should be reasonably comprehensive and include inquiry by the producers regarding the types of insurance serviced by the producer (*i.e.*, commercial insurance or any other type of insurance). Most certainly, coverage gaps must

be brought to the attention and understanding of the client on such occasions – even when redundant with the advice given on many prior occasions.

- o.) The standard of care for insurance marketers also requires that they deal with the insurance client honestly and in good faith. Producers should not misrepresent the terms of any insurance contract or present information about the contract that is deceptive or misleading. Moreover, the standard of care for producers requires them to be knowledgeable about the insurance contract that is being presented to the client as well as generally being knowledgeable about the types of insurance that are available in the marketplace (even from competing insurance marketers or companies). Producers should also honestly, thoroughly and accurately answer questions from the insurance client. If the producer does not have the knowledge to provide an accurate and complete answer, the producer should so state and offer to do the research necessary to accurately, thoroughly and fairly respond to the inquiry or state that the research will not be done. If the client's needs require that they purchase insurance coverage that the producer cannot sell (because of marketing restrictions or because the coverage is not commercially available), the producer should truthfully explain the situation to the client. Producers are high information professionals giving insurance advice to almost always low information clients regarding complex financial service transactions. Producers are not mere order takers. Clients look to producers to get insurance advice – not just expecting the producer to correctly take down and dispatch the client's order for a particular insurance policy and deliver

the correct order to the client. Almost always the client only knows in a general way what kind of insurance they want.

11. The foregoing departures from the standard of care as well as others are outlined in the attached affidavit of Plaintiff's expert Frederick Berry. [Affidavit attached as Exhibit 1].
12. As a direct and proximate result of Provost's actions below the standard of care for marketers and producers of insurance, the Plaintiffs have been damaged in a sum that will be proven at the trial of this matter. These damages include but are not limited to: (1) Spartanburg Marriott's damages caused by Provost's malpractice and negligence are measured by the loss incurred in revenue that should have been covered by the policy plus interest provided by law, less any amount paid toward that judgment; (2) emotional distress, humiliation, inconvenience, and anxiety experienced, and reasonably probable to be experienced in the future and, (3) other damages allowed by law.

FOR A SECOND CAUSE OF ACTION
VIOLATION OF SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT

13. The foregoing paragraphs are incorporated by reference as if fully restated herein.
14. The allegations described against Provost above: namely, decreasing Plaintiff's existing insurance coverage at a higher cost and for its own benefit constitute deceptive acts or practices in a conduct of trade of commerce which has an adverse effect on the public interest.
15. Provost's deceptive acts and practices were repeated across a number of insureds covered by the same 2019 and 2020 policies. These acts are also capable of further repetition because Provost continues to be actively engaged in insurance production and negotiation in the State of South Carolina.
16. As a direct and proximate result of Provost's deceptive acts and practices, Plaintiff has suffered consequential damages.
17. Provost's actions constitute willful or knowing violations of South Carolina Code Annotated §

39-5-10.

18. Plaintiff is thereby entitled to treble damages plus interest, costs, and attorney's fees.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- a. Actual damages attributable to monetary loss or damage to Plaintiffs;
- b. Punitive damages if shown by clear and convincing evidence;
- c. For costs of suit incurred herein;
- d. For reasonable attorneys fees;
- e. For interest as provided by law;
- f. For such other and further relief as the court and jury may appear just and proper.

Respectfully submitted this 2nd day of April, 2021

Plaintiff demands a jury to decide all triable issues.

RESPECTFULLY SUBMITTED BY:

Hodge & Langley Law Firm

s/T. Ryan Langley _____

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