

IN THE UNITED STATES DISTRICT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

HARTFORD INSURANCE :
COMPANY OF THE MIDWEST :

Plaintiff, :

v. :

CIVIL ACTION FILE

NO. _____

LEON H. MESSERLIAN, :
NORMA J. MESSERLIAN, M.P., a :
minor through A.P. as next friend and :
natural parent, and A.P., individually, :

Defendants. :

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Hartford Insurance Company of the Midwest (“Hartford”), for its
Complaint against Defendants Leon H. Messerlian, Norma J. Messerlian
(collectively, the “Messerlians”), M.P., a minor through A.P. as next friend and
natural parent, and A.P., individually, alleges as follows:

INTRODUCTION

1.

This is an action for declaratory relief pursuant to 28 U.S.C. § 2201 for the
purpose of resolving an actual controversy between and among Hartford, the
Messerlians, M.P., and A.P. arising out of an insurance policy issued by Hartford

to the Messerlians. In this action, Hartford seeks a declaration that it has no obligation to defend or indemnify the Messerlians in connection with underlying litigation in which M.P. and A.P. allege that the Messerlians are liable for Leon H. Messerlian's sexual molestation and exploitation of M.P., a minor, while M.P. was a student of Leon H. Messerlian's business.

THE PARTIES

2.

Hartford Insurance Company of the Midwest is an Indiana Corporation engaged in the insurance business with a statutory home office located at 502 Pennsylvania Parkway, Suite 400, Indianapolis, Indiana 462810, and its principal place of business located at One Hartford Plaza, Hartford, Connecticut 06155. Hartford is authorized to transact business and has transacted business in the State of Georgia.

3.

Leon H. Messerlian is a citizen of Georgia who resided in Hall County at the time of the events giving rise to this lawsuit. On information and belief, Leon H. Messerlian is currently incarcerated and may be served with process at the Calhoun State Prison, 27823 Main Street, Morgan, Calhoun County, Georgia 39866.

4.

Norma J. Messerlian is a citizen of Georgia residing in Hall County. On information and belief, Norma J. Messerlian may be served with process at 6624 Shoal Creek Road, Clermont, Georgia 30527.

5.

M.P. is a minor and a citizen of Georgia. M.P. is an alias used to protect her true identity due to the nature of the claims she has made in the underlying litigation.

6.

A.P. is a parent of M.P. and a citizen of Georgia. A.P. is an alias used to protect her true identity due to the nature of the claims she has made in the underlying litigation.

JURISDICTION AND VENUE

7.

There is complete diversity between Hartford on the one hand and all of the Defendants on the other hand.

8.

The amount in controversy exceeds \$75,000.00, exclusive of interest and costs, because the insurance policies at issue here each have policy limits of

\$100,000.

9.

Thus, this Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1332.

10.

This Court has personal jurisdiction over all of the Defendants, as they are all citizens of the State of Georgia.

11.

Venue is proper in the Northern District of Georgia, Gainesville Division, pursuant to 28 U.S.C. § 1391(b)(1) because at least one of the Defendants reside in Hall County, Georgia, which is part of the Gainesville Division of the Northern District.

12.

This action is properly filed pursuant to 28 U.S.C. § 2201 because an actual controversy of a ripe and justiciable nature exist among Hartford, the Messerlians, M.P., and A.P. involving whether Hartford has a duty to defend or indemnify the Messerlians for the claims being asserted against them in the underlying litigation brought by M.P. and A.P.

FACTS

13.

M.P. and A.P. filed suit against Leon H. Messerlian in the State Court of Hall County, Georgia on January 22, 2018, in an action captioned *M.P., a minor through A.P. as next friend and natural parent, and A.P., individually*, Civil Action File No. 2018SV34Z (the “Underlying Lawsuit”).

14.

On February 5, 2019, M.P. and A.P. amended their complaint in the Underlying Lawsuit to assert claims against Norma J. Messerlian. A true and correct copy of the amended complaint in the Underlying Lawsuit is attached hereto as Exhibit A.

15.

M.P. and A.P. allege that Leon H. Messerlian did business as Oxford Academy Classical Studies to provide private violin lessons to minors. (Ex. A ¶¶ 9-10.)

16.

M.P. and A.P. allege that Leon H. Messerlian operated Oxford Academy Classical Studies at 857-C Bradford Street, Gainesville, Georgia 30501. (*Id.* at ¶ 9.)

17.

M.P. and A.P. allege that M.P. attended violin lessons at Oxford Academy of Classical Studies from January 2011 to July 2015 (the “Subject Period”). (*Id.* at ¶ 11.)

18.

M.P. and A.P. allege that, during the Subject Period, Leon H. Messerlian: (a) intentionally and inappropriately touched M.P.’s genitals, (b) intentionally and inappropriately forced M.P. to touch his genitals, (c) sexually molested M.P., (d) intentionally and inappropriately discussed sexual topics with M.P., (e) intentionally and inappropriately showed M.P. explicit images and pornographic videos, and (f) intentionally and inappropriately abused M.P.s’ trust and emotional wellbeing. (*Id.* at ¶ 13.)

19.

M.P. and A.P. allege that Norma J. Messerlian was aware of and failed to warn of Leon H. Messerlian’s actions and intent to assault, batter, and/or inflict emotional distress on M.P. and actively aided, abetted, and conspired with Leon H. Messerlian to commit those acts and prevent A.P. from discovering them during the Subject Period. (*Id.* at ¶¶ 14, 24-25.)

20.

M.P. and A.P. allege that the Messerlians made intentionally false representations to A.P. concerning the events taking place at M.P.'s violin lessons to assure A.P. of M.P.'s wellbeing. (*Id.* at ¶ 15, 25.)

21.

M.P. and A.P. allege that the Messerlians made intentionally false representations to M.P. to induce M.P. not to report Leon H. Messerlian's actions. (*Id.* at ¶ 16.)

22.

M.P. and A.P. allege that A.P. became aware of Leon H. Messerlian's action on July 21, 2015 and immediately discontinued all contact with the Messerlians. (*Id.* at ¶ 18.)

23.

M.P. and A.P. allege that they reported Leon H. Messerlian's actions to the Hall County Sherriff's Office on July 23, 2015. (*Id.* at ¶ 19.)

24.

M.P. and A.P. allege that Leon H. Messerlian was arrested and charged with child molestation, felony sexual battery, and enticing a child for indecent purposes on July 29, 2015 and September 9, 2015. (*Id.* at ¶¶ 20, 22.)

25.

M.P. and A.P. allege that Leon H. Messerlian was charged with fifty counts of possession of child pornography on August 19, 2015. (*Id.* at ¶ 21.)

26.

M.P. and A.P. allege that, on September 15, 2017, Leon H. Messerlian pled guilty to charges of child molestation and sexual exploitation of a child and was sentenced to serve thirty years. (*Id.* at ¶ 23.)

27.

M.P. and A.P. allege that Norma J. Messerlian destroyed evidence and refused to provide deposition testimony to conceal Leon H. Messerlian's actions. (*Id.* at ¶¶ 26-27.)

28.

As amended, the Underlying Lawsuit asserts claims against the Messerlians for intentional infliction of emotional distress, assault and battery, negligent infliction of emotional distress, conspiracy, fraud, and recovery of a minor's medical and treatment costs. (*Id.* at ¶¶ 28-37.)

29.

No notice was given to Hartford of M.P. and A.P.'s claims until February 20, 2019, more than three-and-a-half years after A.P. first became aware of the

events giving rise to the Underlying Lawsuit and Leon H. Messerlian's arrest and more than a year after M.P. and A.P. filed the Underlying Lawsuit against Leon H. Messerlian.

THE POLICIES

30.

Hartford issued policy number 55 RBA 344446 to the Messerlians beginning with the policy period 09/05/92 to 09/05/93 and renewing through the policy period 09/05/18 to 09/05/19. True and correct copies of the policies issued during the Subject Period for the policy periods of 09/05/10 to 09/05/11; 09/05/11 to 09/05/12; 09/05/12 to 09/05/13; 09/05/13 to 09/05/14; and 09/05/14 to 09/05/15 (collectively, the "Policies") are attached hereto as Exhibits B, C, D, E, and F, respectively.

31.

The "residence premises" listed in the Policies is 6624 Shoal Creek Road, Clermont, Georgia 30527.

32.

The Policies contain a liability coverage section pursuant to The Hartford Homeowners 3 Insurance Policy Special Form (HO 00 03 10 00).

33.

The Policies' insuring agreement for Coverage E – Personal Liability provides as follows:

A. Coverage E – Personal Liability

If a claim is made or a suit is brought against an “insured” for damages because of “bodily injury” or “property damage” caused by an “occurrence” to which this coverage applies, we will:

1. Pay up to our limit of liability for the damages for which an “insured” is legally liable. Damages include prejudgment interest awarded against an “insured”; and
2. Provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when our limit of liability for the “occurrence” has been exhausted by payment of a judgment or settlement.

34.

The Policies define “occurrence” as follows:

8. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period, in:
 - a. “Bodily injury”; or
 - b. “Property damage”.

35.

The Policies' Expected or Intended Injury Exclusion provides as follows:

Coverages **E** and **F** do not apply to the following:

1. Expected Or Intended Injury

"Bodily injury" or "property damage" which is expected or intended by an "insured" even if the resulting "bodily injury" or "property damage":

- a.** Is of a different kind, quality or degree than initially expected or intended; or
- b.** Is sustained by a different person, entity, real or personal property, than initially expected or intended.

However, this Exclusion E.1. does not apply to "bodily injury" resulting from the use of reasonable force by an "insured" to protect persons or property;

36.

The Policies' Business Exclusion provides, in pertinent part, as follows:

Coverages **E** and **F** do not apply to the following:

* * * *

2. "Business"

- a.** "Bodily injury" or "property damage" arising out of or in connection with a "business" conducted from an "insured location" or engaged in by an "insured", whether or not the "business" is owned or operated by an "insured" or employs an "insured".

This Exclusion **E.2.** applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the "business".

37.

As amended by endorsement, the Policies define “business” as follows:

A. “Business,” as defined in the policy, means:

1. A trade, profession or occupation engaged in on a full-time, part-time or occasional basis; or
2. Any other activity engaged in for money or other compensation, except the following:
 - a. One or more activities:
 - (1) Not described in **b.** through **d.** below; and
 - (2) For which no "insured" receives more than \$2,000 in total compensation for the 12 months before the beginning of the policy period;
 - b. Volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;
 - c. Providing home day care services for which no compensation is received, other than the mutual exchange of such services; or
 - d. The rendering of home day care services to a relative of an "insured".

38.

The Policies’ “Insured’s” Premises Not An “Insured Location” Exclusion provides as follows:

Coverages **E** and **F** do not apply to the following:

* * * *

3. “Insured's” Premises Not An “Insured Location”

“Bodily injury” or “property damage” arising out of a premises:

- a. Owned by an “insured”;
- b. Rented to an “insured”; or
- c. Rented to others by an “insured”;

that is not an “insured location”;

39.

The Policies defined “insured location” as follows:

6. "Insured location" means:

- a. The "residence premises";
- b. The part of other premises, other structures and grounds used by you as a residence; and
 - (1) Which is shown in the Declarations; or
 - (2) Which is acquired by you during the policy period for your use as a residence;
- c. Any premises used by you in connection with a premises described in a. and b. above;
- d. Any part of a premises:
 - (1) Not owned by an "insured"; and

- (2) Where an "insured" is temporarily residing;
- e. Vacant land, other than farm land, owned by or rented to an "insured";
 - f. Land owned by or rented to an "insured" on which a one, two, three or four family dwelling is being built as a residence for an "insured";
 - g. Individual or family cemetery plots or burial vaults of an "insured"; or
 - h. Any part of a premises occasionally rented to an "insured" for other than "business" use.

40.

The Policies' Sexual Molestation, Corporate Punishment or Physical or Mental Abuse Exclusion provides, in pertinent part, as follows:

Coverages E and F do not apply to the following:

* * * *

7. Sexual Molestation, Corporal Punishment Or Physical Or Mental Abuse

"Bodily injury" or "property damage" arising out of sexual molestation, corporal punishment or physical or mental abuse; . . .

41.

Liability coverage under the Policies is subject to certain conditions precedent. Among these is the condition precedent to provide timely notice which

provides, in part, as follows:

C. Duties After "Occurrence"

In case of an "occurrence", you or another "insured" will perform the following duties that apply. We have no duty to provide coverage under this policy if your failure to comply with the following duties is prejudicial to us. You will help us by seeing that these duties are performed:

1. Give written notice to us or our agent as soon as is practical, which sets forth:
 - a. The identity of the policy and the "named insured" shown in the Declarations;
 - b. Reasonably available information on the time, place and circumstances of the "occurrence"; and
 - c. Names and addresses of any claimants and witnesses;

* * * *

3. Promptly forward to us every notice, demand, summons or other process relating to the "occurrence";

* * * *

CAUSES OF ACTION

Count I – Declaratory Relief – Leon H. Messerlian

42.

Hartford hereby incorporates by reference all prior allegations as if fully set forth herein.

43.

Hartford does not have any obligation to defend or indemnify Leon H. Messerlian for any damages, losses, claims, costs or expenses arising out of or related to the claims asserted in the Underlying Lawsuit on numerous grounds, including, but not limited, to:

- (a) Leon H. Messerlian has failed to satisfy all terms, conditions, and obligations of the Policies, including, but not limited, to the condition requiring the insured in the event of an occurrence to provide written notice to Hartford as soon as practical and requiring the insured to promptly forward every demand, notice, summons or other process received;
- (b) Sexual molestation and exploitation are not “occurrences;”
- (c) One or more of the exclusions in the Policies apply, including, but not limited to, the Expected or Intended Injury Exclusion; Business Exclusion; “Insured’s” Premises Not An “Insured Location” Exclusion; and Sexual Molestation, Corporate Punishment or Physical or Mental Abuse Exclusion.

Count II – Declaratory Relief – Norma J. Messerlian

44.

Hartford hereby incorporates by reference all prior allegations as if fully set forth herein.

45.

Hartford does not have any obligation to defend or indemnify Norma J. Messerlian for any damages, losses, claims, costs or expenses arising out of or related to the claims asserted in the Underlying Lawsuit on numerous grounds, including, but not limited, to:

- (a) Sexual molestation and exploitation are not “occurrences;”
- (b) One or more of the exclusions in the Policies apply, including, but not limited to, the Expected or Intended Injury Exclusion; Business Exclusion; “Insured’s” Premises Not An “Insured Location” Exclusion; and Sexual Molestation, Corporate Punishment or Physical or Mental Abuse Exclusion.

46.

WHEREFORE, Hartford demands judgment as follows:

A. For a declaration that Hartford has no duty to defend, indemnity, or reimburse Leon H. Messerlian or otherwise pay for any damages, losses, claims,

costs, or expenses arising out of the claims asserted against Leon H. Messerlian in the Underlying Lawsuit;

B. For a declaration that Hartford has no duty to defend, indemnity, or reimburse Norma J. Messerlian or otherwise pay for any damages, losses, claims, costs, or expenses arising out of the claims asserted against Norma J. Messerlian in the Underlying Lawsuit;

C. That the judgment be binding on M.P. and A.P.;

D. For the cost of this suit; and

E. For such other and proper relief as this Court may deem just and proper.

This 10th day of July, 2019.

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