

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

MONITRONICS INTERNATIONAL, INC., §  
§  
Plaintiff, §  
§  
v. § CIVIL ACTION NO. 3:18-cv-2052  
§  
EVEREST INDEMNITY INSURANCE CO., §  
NAVIGATORS SPECIALTY INSURANCE §  
CO., and AXIS SURPLUS INSURANCE CO., §  
§  
Defendants. §

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**PLAINTIFF’S ORIGINAL COMPLAINT**

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Plaintiff Monitronics International, Inc. (“Monitronics”) files this Original Complaint against defendants Everest Indemnity Insurance Co. (“Everest”), Navigators Specialty Insurance Co. (“Navigators”), and AXIS Surplus Insurance Co. (“AXIS”) as follows:

**I. PRELIMINARY STATEMENT**

1.1. This is an insurance coverage lawsuit arising from the refusal of Everest, Navigators, and AXIS, Monitronics’ insurers, to indemnify Monitronics for numerous lawsuits (the “TCPA Actions”),<sup>1</sup> the majority of which were consolidated into a multi-district litigation styled *In Re*

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<sup>1</sup> *Diana Mey, et al. v. Monitronics International, Inc., et al.*, No. 5:11-cv-00090, United States District Court, Northern District of West Virginia (Wheeling); *Janet Hodgkin and Michael Hodgkin, et al. v. Monitronics International, Inc., et al.*, No. 2:13-cv-00321, United States District Court, Western District of Washington (Seattle); *Kerry O’Shea, et al. v. Monitronics International, Inc., et al.*, No. 8:13-cv-01054, United States District Court, Central District of California (Santa Ana); *Diana Mey, et al. v. Honeywell International, Inc., et al.*, No. 2:12-cv-01721, United States District Court, Southern District of West Virginia (Charleston); *Scott Dolemba, et al. v. Monitronics International, Inc., et al.*, No. 1:14-cv-01955, United States District Court, Northern District of Illinois (Chicago); *Sandra Fairley v. Monitronics International, Inc.*, No. 1:14-cv-00525, United States District Court, Northern District of Ohio (Cleveland); *Jason Bennett, et al. v. Monitronics International, Inc., et al.*, No. 1:14-cv-00054, United States District Court, Southern District of Alabama (Mobile); *Keith Finklea, et al. v. Monitronics International, Inc., et al.*, No. 3:14-cv-00153, United States District Court, Southern District of Texas (Galveston); *Todd C. Bank, et al. v. Alliance*

*Monitronics International, Inc.*, Telephone Consumer Protection Act Litigation, Civil Docket No. 1:13-MD-02493—IMK-MJA, in the U.S. District Court, Northern District of West Virginia (the “MDL”). The underlying plaintiffs generally allege that various home security dealers of Monitronics (“Dealers”) or their agents placed unlawful calls in violation of the Telephone Consumer Protection Act (“TCPA”) for the purpose of selling home alarm and security monitoring systems that would ultimately be monitored by Monitronics.

1.2. Without the assistance of its insurers, Monitronics reached a settlement with the MDL plaintiffs in June 2017 and agreed to the certification of a settlement class and to pay \$28 million in exchange for the release of all claims against it in the MDL (the “Settlement Agreement”). On

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*Security, Inc., Monitronics International, Inc., et al.*, No. 1:14-cv-04410, United States District Court, Eastern District of New York (Brooklyn); *Phillip Charvat v. Monitronics Int’l, Inc., et al.*, No. 2:14-cv-01366, United States District Court, Southern District of Ohio (Columbus); *Nicholas Shreders, Jonathan Mraunac, and Vincent Brizgys, et al. v. UTC Fire & Securities America Corporation, Inc., et al.*, No. 1:14-cv-01539, United States District Court, Northern District of Illinois (Chicago); *Craig Cunningham v. Alliance Security, et al.*, No. 3:14-cv-00769, United States District Court, Middle District of Tennessee (Nashville); *Craig Cunningham v. The Altitude Group, LLC, et al.*, No. 3:15-cv-00929, United States District Court, Middle District of Tennessee (Nashville); *George Cain, et al. v. Monitronics International, Inc.*, No. 8:13-cv-01859, United States District Court, Central District of California (Santa Ana); *Merrill Primack v. Monitronics International, Inc.*, No. 1:13-cv-07253, United States District Court, Northern District of Illinois (Chicago); *Merrill Primack v. Monitronics International, Inc.*, No. 1:14-cv-06367, United States District Court, Northern District of Illinois (Chicago); *Michael C. Worsham v. Monitronics International, Inc.*, No. 1:15-cv-02139-GLR, United States District Court, District of Maryland (Baltimore); *Michael C. Worsham v. Monitronics International, Inc. and Alliance Security, Inc.*, No. 1:16-cv-00600-GLR, United States District Court, District of Maryland (Baltimore); *James Giles v. ISI Alarms NC Inc., et al.*, No. 1:13-cv-02277, United States District Court, Northern District of Georgia (Atlanta); *Merrill Primack, et al. v. United Technologies Corp. and Monitronics International, Inc.*, No. 1:16-cv-04069, United States District Court, Northern District of Illinois (Chicago); *Michael Worsham v. Alliance Security, Inc. and Monitronics International, Inc.*, No. 090100012382016, District Court for Harford County, Maryland; *Mark Fitzhenry v. Monitronics International, Inc.*, No. 2012-cv-1010600295; Charleston County, South Carolina Magistrate Court; *Mark Fitzhenry v. Monitronics International, Inc. et al.*, No. 2012-cv-1010600656; Charleston County, South Carolina Magistrate Court; and *Mark Fitzhenry v. Monitronics International, Inc., et al.*, No. 2012-cv-1010600799; Charleston County, South Carolina Magistrate Court; *Darren R. Newhart v. Monitronics International, Inc.*, No. 1:15-cv-22862-JAL, United States District Court, Southern District of Florida (Miami); *Bruce Rorty v. Monitronics International, Inc., et al.*, No. 2:16-cv-06542, United States District Court, Central District of California (Western Division—Los Angeles); *Jeffrey Wagdy v. Monitronics International, Inc., et al.*, No. 8:16-cv-01306, United States District Court, Middle District of Florida (Tampa); *Michael Worsham v. Monitronics International, Inc. and Alliance Security*, No. 090100020382016, District Court for Harford County, Maryland.

September 18, 2017, the MDL court preliminarily approved the settlement class. Pursuant to the Settlement Agreement, Monitronics deposited \$5 million into the settlement fund for notice costs on September 28, 2017.

1.3. The MDL court entered its Final Approval Order and Judgment on June 12, 2018, and the clerk of court entered Judgment on July 2, 2018. The judgment has been appealed to the United States Court of Appeals for the Fourth Circuit. Pursuant to the Settlement Agreement, Monitronics must fund the remainder of the \$28 million twenty days after either the appeal is dismissed or the judgment is affirmed and the time for review of that order has run.

1.4. Pursuant to the policies issued by Everest, Navigators, and AXIS, each insurer is obligated to indemnify Monitronics, but none has paid Monitronics any part of the MDL settlement. Accordingly, Monitronics asks the Court to award damages against Everest, Navigators, and AXIS for breach of their respective duties to indemnify Monitronics. Monitronics also asks the Court to declare the parties' rights and obligations with respect to the insurance policies issued by Everest, Navigators, and AXIS. Each of these insurers has asserted ill-founded defenses to coverage and arguments calculated to minimize its contribution to a settlement in violation of a clear-cut indemnity obligation to Monitronics. In particular, Monitronics seeks a declaration regarding the amount each insurer must contribute to the settlement.

## **II. PARTIES**

2.1. Plaintiff Monitronics International, Inc. is a Texas corporation with its principal place of business in Dallas, Texas.

2.2. Defendant Everest Indemnity Insurance Co. is a surplus lines carrier eligible to engage in business in Texas and a Delaware corporation with its principal place of business in New Jersey. Pursuant to Texas Insurance Code § 804.106, service may be made on the Commissioner of

Insurance, Chief Clerk Office, 333 Guadalupe, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, who shall forward a copy of Plaintiff's Original Complaint to:

Legal Department  
Everest Indemnity Insurance Company  
c/o Mt. McKinley Managers, L.L.C.  
Westgate Corporate Center  
P.O. Box 830  
Liberty Corner, NJ 07938-0830

and

Everest Indemnity Insurance Company  
1209 Orange Street  
Wilmington, DE 19801.

2.3. Defendant Navigators Specialty Insurance Co. is a surplus lines carrier eligible to engage in business in Texas and a New York corporation with its principal place of business in Connecticut. Pursuant to Texas Insurance Code § 804.106, service may be made on the Commissioner of Insurance, Chief Clerk Office, 333 Guadalupe, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, who shall forward a copy of Plaintiff's Original Complaint to:

President of NIC Insurance Company  
1 Penn Plaza, 32<sup>nd</sup> Floor  
New York, NY 10119

and

President of NIC Insurance Company  
1 Penn Plaza, 55<sup>th</sup> Floor  
New York, NY 10119.

2.4. Defendant AXIS Surplus Insurance Company is a surplus lines carrier eligible to engage in business in Texas and an Illinois corporation with its principal place of business in Georgia. Pursuant to Texas Insurance Code § 804.106, service may be made on the Commissioner of Insurance, Chief Clerk Office, 333 Guadalupe, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, who shall forward a copy of Plaintiff's Original Complaint to:

AXIS U.S. Insurance  
Attn: Claims Administrator  
11680 Great Oaks Way, Suite 500  
Alpharetta, GA 30022.

### **III. JURISDICTION**

3.1. Monitronics is a citizen of Texas, and each defendant is a citizen of a state other than Texas, so complete diversity exists between Monitronics and the defendants. Each of Monitronics' insurers issued insurance policies to Monitronics in Texas.

3.2. The amount in controversy exceeds \$75,000, exclusive of interest and costs. The policies issued to Monitronics by Everest, Navigators, and AXIS include limits of liability totaling at least \$27 million. The defendants' refusal to indemnify Monitronics has resulted in damages caused by each insurer in an amount in excess of \$75,000. The Court therefore has jurisdiction over the lawsuit pursuant to 28 U.S.C. § 1332(a).

### **IV. VENUE**

4.1. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Monitronics' claims occurred in this district.

### **V. CONDITIONS PRECEDENT**

5.1. All conditions precedent set forth in the applicable insurance contracts between Monitronics and its insurers have been performed or have occurred, as required by Federal Rule of Civil Procedure 9(c).

### **VI. FACTS**

#### **A. The TCPA Actions**

6.1. The plaintiffs in the underlying TCPA Actions allege that telemarketing calls were placed by or at the direction of various defendants, including Monitronics, through automated telephone dialing systems ("ATDS") and pre-recorded/artificial voice calls, or to numbers listed

on the nationwide “Do Not Call Registry,” violating the TCPA. Plaintiffs in the TCPA Actions generally allege that various home security dealers placed illegal calls, in violation of the TCPA, on behalf of alarm manufacturers or Monitronics for the purpose of selling home alarm and security monitoring systems. For instance, the plaintiffs in the MDL allege in their Second Amended Master Consolidated Complaint that:

Beginning in July of 2012, Plaintiff Phillip J. Charvat received numerous live and prerecorded/ADTS calls from [a dealer] attempting to sell him alarm systems manufactured by [an alarm manufacturer], and alarm monitoring services provided by Monitronics.

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Beginning October 26, 2011, Ms. Mey received a series of calls, some from numbers with blocked caller IDs, from callers purporting to be calling from [an alarm manufacturer] and Monitronics.

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[S]ince June of 2012, Ms. Bowler has received numerous illegal prerecorded message calls from or at the direction of: . . . b. Monitronics Authorized Dealers for the purpose of selling or promoting the sale of Monitronics alarm-monitoring services.

6.2. The MDL plaintiffs allege that Monitronics is vicariously liable for the Dealers’ calls because (1) the Dealers placed the calls on behalf of, and for the benefit of, Monitronics, (2) the Dealers placed the calls under Monitronics’ actual authority, (3) the Dealers placed the calls under Monitronics’ apparent authority, or (4) Monitronics ratified the Dealers’ illegal conduct. In the absence of evidence that Monitronics initiated, directed, or controlled the alleged illegal telemarketing activity of its Dealers, the MDL plaintiffs argued in support of their vicarious liability theory that Monitronics negligently failed to timely stop its Dealers from violating the TCPA.

6.3. In June 2017, without its insurers’ assistance, the MDL plaintiffs and Monitronics reached a settlement, and Monitronics agreed to the certification of a settlement class and to pay

\$28 million in exchange for the release of all claims against it in the MDL. On August 31, 2017, the MDL plaintiffs filed a motion for preliminary approval of class action settlement. Exhibit B to the motion was the signed Settlement Agreement. On September 18, 2017, the MDL court issued its preliminary approval order of the Settlement Agreement. In accordance with its obligations under the Settlement Agreement, Monitronics deposited \$5 million into the settlement fund for notice costs on September 28, 2017.

6.4. The MDL court's Final Approval Order and Judgment was entered on June 12, 2018, and the clerk of court entered Judgment on July 2, 2018. An appeal of the final judgment has been filed in the Fourth Circuit.

6.5. Pursuant to the Settlement Agreement, Monitronics must pay the remainder of the \$28 million "within ten business days following the Effective Date," and the "'Effective Date' means the date five business days following the later of the following events: . . . (ii) if there is an appeal or appeals of the Final Approval Order and Judgment, five business days after the date of entry of an order affirming the Final Approval Order and Judgment without material modification, and the time for review of that order has run, or entry of an order dismissing the appeal(s)."

6.6. Monitronics' \$5 million payment and its obligation to pay the remaining settlement funds trigger its insurers' indemnity obligations under their policies, as each of the insurers is obligated to pay covered damages or losses that Monitronics is "legally obligated to pay[.]"

**B. Everest, Navigators, and AXIS Have Duties to Defend and/or Indemnify Monitronics in the TCPA Actions**

**1. Everest**

6.7. Two Everest policies apply to the TCPA Actions. For the policy period August 31, 2012 to August 31, 2013, Everest issued to Monitronics Commercial General Liability Policy No. 51GL006368-121, and Commercial Catastrophe Liability Policy No. 51CC002250-121. True and

correct copies of the Everest policies are attached as Exhibit A and are incorporated herein by reference. The Everest policies provide coverage on an occurrence basis.

6.8. The Everest primary policy contains an insuring clause that reads, in relevant part:

**COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

a. We will pay those sums that the insured become legally obligated to pay as damages because of “personal and advertising injury” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “personal and advertising injury” to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or “suit” that may result[.]

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b. This insurance applies to “personal and advertising injury” caused by an offense arising out of your business but only if the offense was committed in the “coverage territory” during the policy period.

6.9. The Everest primary policy contains pertinent definitions, as follows:

**SECTION V — DEFINITIONS**

1. “Advertisement” means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters[.]

\*\*\*

14. “Personal and advertising injury” means injury, including consequential “bodily injury”, arising out of one or more of the following offenses:

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e. Oral or written publication, in any manner, of material that violates a person’s right of privacy[.]

6.10. The Everest umbrella policy contains an insuring clause that reads, in relevant part:



**COVERAGE A. BODILY INJURY, PROPERTY DAMAGE AND PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

a. We will pay “net loss” in excess of the “retained limit” that the insured becomes legally obligated to pay as damages because of “injury” to which this insurance applies. But, the amount of “net loss” we will pay for damages is limited as described in Section III – Retained Limit and Limits of Insurance. No other obligation or liability to pay “net loss” or perform acts or services is covered unless explicitly provided for under Defense and Supplementary Payments.

b. This insurance applies to:

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(2) “Personal and advertising injury” caused by an offense arising out of your business but only if the offense was committed during the “policy period”.

6.11. The Everest umbrella policy contains pertinent definitions, as follows:

**SECTION V — DEFINITIONS**

1. “Advertisement” means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters[.]

\*\*\*

14. “Personal and advertising injury” means injury, including consequential “bodily injury”, arising out of one or more of the following offenses:

\*\*\*

e. Oral or written publication, in any manner, of material that violates a person’s right of privacy[.]

6.12. Everest has a duty to defend Monitronics in any lawsuit seeking damages potentially covered under the policies and a duty to indemnify Monitronics for covered damages.

6.13. Allegations in the MDL’s Second Amended Master Consolidated Complaint and throughout the complaints in the TCPA Actions clearly triggered Everest’s duties to defend under

its policies.

6.14. Monitronics timely submitted the TCPA Actions to Everest for a defense and indemnity under the relevant policies. Everest accepted coverage pursuant to a reservation of rights.

6.15. Everest has a duty to indemnify Monitronics for the MDL settlement pursuant to its policies.

6.16. Everest has asserted ill-founded defenses to coverage and arguments calculated to minimize or avoid its contribution to a settlement in violation of its indemnity obligation to Monitronics.

6.17. Everest has breached its policies by failing and refusing to indemnify Monitronics for the settlement. Everest is obligated to “pay those sums that [Monitronics] become[s] legally obligated to pay as damages because of ‘personal and advertising injury’ to which this insurance applies.” Monitronics has paid \$5 million to the settlement administrator and is legally obligated to pay the rest of the settlement to the MDL plaintiffs.

6.18. Everest has asserted that several exclusions may preclude coverage, in whole or in part, for the TCPA Actions under the Everest primary policy, as follows:

**2. Exclusions**

This insurance does not apply to:

a. Knowing Violation of Rights of Another

“Personal and advertising” injury caused by or at the direction of the Insured with the knowledge that the act would violate the rights of another and would inflict “personal and advertising injury.”

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e. Contractual Liability

“Personal and advertising injury” for which the insured has assumed liability in contract or agreement. This exclusion does

not apply to damages that the insured would have in the absence of the contract or agreement.

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i. Infringement of Copyright, Patent, Trademark or Trade Secret

“Personal and advertising injury” arising out of the infringement of copyright, patent, trademark or trade secret or other intellectual property rights.

6.19. Everest has asserted that the primary policy’s Known, Continuous or Progressive Injury or Damage Exclusion may preclude coverage, in whole or in part, for the TCPA Actions:

This insurance does not apply to:

aa. “Personal and advertising injury” that was known to any insured prior to the beginning of the policy period regardless of whether:

- (1) There is a “continuation” of such “personal and advertising injury” during the policy period; or
- (2) The offense which caused such “personal and advertising injury” causes new or additional “personal and advertising injury” during the policy period.

6.20. Everest also asserts the following exclusions may preclude coverage, in whole or in part, for the TCPA Actions under its umbrella policy:

**k. Personal and Advertising Injury**

Personal and advertising injury:

- (1) Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict “personal and advertising injury[.]”

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**m. Known Injury or Damage**

“Injury” that was known to any insured prior to the beginning of the “policy period” regardless of whether:

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(2) There is a “continuation” of such “injury” during the policy period[.]

6.21. None of the exclusions in the Everest policies negate Everest’s duties to defend and indemnify Monitronics in the TCPA Actions.

## **2. Navigators**

6.22. Navigators issued Commercial Excess Liability Policy No. CH11EXC736980IC to Monitronics for the policy period August 31, 2011 to August 31, 2012. A true and correct copy of the Navigators policy is attached as Exhibit B and is incorporated herein by reference. The Navigators policy is an occurrence-based policy.

6.23. The Navigators policy contains an insuring clause that reads, in relevant part:

### **SECTION I – COVERAGE**

#### **1. Insuring Agreement**

##### **A. Excess Liability**

1. We will pay on behalf of the insured and in excess of “underlying limits” those sums the insured becomes legally obligated to pay as damages for “loss” to which this insurance applies[.]

6.24. The Navigator policy defines “loss” as “bodily injury, property damage, personal and advertising injury or other loss defined by and to which the ‘controlling underlying insurance’ applies.”

6.25. Monitronics timely submitted the TCPA Actions to Navigators for coverage. Navigators has accepted notice and reserved its rights under the Navigators policy.

6.26. Navigators has a duty to indemnify Monitronics for the MDL settlement pursuant to its policy.

6.27. Navigators has asserted ill-founded defenses to coverage and arguments calculated to

minimize or avoid its contribution to a settlement in violation of its indemnity obligation to Monitronics.

6.28. Navigators has breached its policy by refusing to indemnify Monitronics for the settlement. Navigators is obligated to “pay on behalf of [Monitronics] and excess of ‘underlying limits’ those sums [Monitronics] becomes legally obligated to pay as damages for ‘loss’ to which this insurance applies.” Monitronics has paid \$5 million to the settlement administrator and is legally obligated to pay the rest of the settlement to the MDL plaintiffs.

6.29. Navigators has asserted that exclusions in its policy may preclude coverage, in whole or in part, for the TCPA Actions, as follows:

## **2. Exclusions**

The EXCLUSIONS sections of the “controlling underlying insurance” are made part of this policy. If an inconsistency or contradiction exists between an Exclusion of this policy and an Exclusion of the “controlling underlying insurance” the Exclusion of this policy will apply.

However, in no case will coverage be excluded by the “controlling underlying insurance” and not excluded by this policy. This insurance does not apply to any liability:

1. to which “controlling underlying insurance” does not apply;
2. for which coverage is provided by “controlling underlying insurance” at limits less than the limits of insurance applicable to other coverage provided by the “controlling underlying insurance” and less than “underlying limits;”
3. for “loss” which commenced prior to this “policy period,” whether or not such “loss” continues, progresses, changes or resumes during this “policy period;”

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1. for which coverage was available on the “controlling underlying insurance” but which you did not purchase.

6.30. None of these exclusions negates Navigators’ duty to indemnify Monitronics.

### 3. AXIS

6.31. AXIS issued AXIS Pro Technet Solutions Insurance Policy Number ECN000043051001 to Monitronics for the policy period of August 31, 2010 to August 21, 2011. A true and correct copy of the AXIS policy is attached as Exhibit C and is incorporated herein by reference. AXIS issued similar errors and omissions policies for the 2008-2009, 2009-2010, and 2011-2012 policy periods.

6.32. Unlike the Everest and Navigators policies, the AXIS policies were issued on a claims-made basis. Under the AXIS policies, the TCPA Actions are treated as a single claim, first made at the time of the earliest claim. Pursuant to these provisions, the 2010-2011 policy is triggered for the TCPA Actions because the first lawsuit was filed against Monitronics in May 2011. Any calls made from the AXIS Policy “**Retroactive Date** [November 18, 2008] through the end of the **Policy Period** of the last Insurance Policy” issued by AXIS [August 31, 2012] are treated as a single **Wrongful Act**. All claims arising from this **Wrongful Act** are deemed to have been made in the 2010-2011 policy period.

6.33. The AXIS policy contains an insuring clause that reads, in relevant part:

#### **Section I. INSURING AGREEMENT**

##### **A. What the Company Insures**

The **Company** will pay on behalf of the **Insured** all **Damages** and **Claim Expense** in excess of the Retention and within the Limits of Insurance which the Limits of Insurance which the **Insured** becomes legally obligated to pay because of liability imposed by law . . . as a result of one or more **Claims** arising from any of the following actual or alleged **Wrongful Acts** in performing **Cyber and Technology Activities**[:]

2. any form of invasion, infringement or interference with rights of privacy or publicity, including false light, public disclosure of private facts, intrusion, breach of confidence and commercial appropriation of name or likeness;

\*\*\*

9. errors, omissions or negligent acts.

6.34. The AXIS policy contains pertinent definitions, as follows:

**A. “Advertising by Insured”** means advertising, publicity or promotion of any kind of the **Insured’s** products or services.

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**H. “Cyber and Technology Activities”** means those services or other activities as described in Item 4. of the Declarations, **Technology Services** and **Advertising by Insured**.

6.35. Monitronics timely submitted the TCPA Actions to AXIS for coverage under the AXIS policy. AXIS accepted coverage pursuant to a reservation of rights.

6.36. AXIS has a duty to indemnify Monitronics for the MDL settlement pursuant to its policy.

6.37. AXIS has asserted ill-founded defenses to coverage and arguments calculated to minimize or avoid its contribution to a settlement in violation of its indemnity obligation to Monitronics.

6.38. AXIS has breached its policy by refusing to indemnify Monitronics for the settlement. AXIS is obligated to “pay on behalf of [Monitronics] all Damages and **Claim Expense** . . . which [Monitronics] becomes legally obligated to pay because of liability imposed by law . . . as a result of one or more **Claims**[.]” Monitronics has paid \$5 million to the settlement administrator and is legally obligated to pay the rest of the settlement to the MDL plaintiffs.

6.39. AXIS has asserted that exclusions in its policy may preclude coverage, in whole or in part, for the TCPA Actions, as follows:

#### **Section V. EXCLUSIONS**

**A.** The **Company** will not be obligated to pay **Damages** or **Claim Expense** or defend **Claim** for or arising out of actual or alleged:

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7. false, misleading, deceptive, fraudulent or misrepresenting statements in Advertising by Insured;
8. antitrust, restraint of trade or unfair or deceptive trade practices;

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**B.** The **Company** will not be obligated to pay **Damages** or **Claim Expense** for **Claims** for or arising out of:

1. an act, error or omission that a jury, court or arbitrator finds dishonest, fraudulent, criminal, malicious or intentionally committed while knowing it was wrongful[.]

\*\*\*

However, these Exclusions . . . do not apply to any **Insured** who did not commit, acquiesce or participate in the actions that gave rise to the **Claim**.

6.40. AXIS has asserted that the policy's definition of damages excludes "civil or criminal fines or penalties."

6.41. None of the exclusions in the AXIS policy negates AXIS's duty to indemnify Monitronics.

## **VII. CAUSES OF ACTION**

7.1. Monitronics incorporates by reference as if set forth in full each and every allegation set forth above into each cause of action below.

### **A. Breach of Contract – Everest**

7.2. Monitronics has at all times complied fully with all material provisions of the Everest policies.

7.3. Everest has duties to defend and indemnify Monitronics pursuant to its policies.

7.4. Everest has materially breached its duty under its policies to indemnify Monitronics for the settlement of the MDL, which Monitronics is legally obligated to pay.



7.5. Everest's breach has damaged Monitronics. Everest's failure to indemnify Monitronics has caused Monitronics damage because Monitronics is legally obligated to pay the \$28 million MDL settlement and has already paid \$5 million towards satisfaction of the same.

7.6. All conditions precedent set forth in the Everest policies have been performed or have occurred.

**B. Breach of Contract – Navigators**

7.7. Monitronics has at all times complied fully with all material provisions of the Navigators policy.

7.8. Navigators has a duty to indemnify Monitronics pursuant to its policy.

7.9. Navigators has materially breached its duty under its policy to indemnify Monitronics for the settlement of the MDL, which Monitronics is legally obligated to pay.

7.10. Navigators' breach has damaged Monitronics. Navigators' failure to indemnify Monitronics has caused Monitronics damage because Monitronics is legally obligated to pay the \$28 million MDL settlement and has already paid \$5 million towards satisfaction of the same.

7.11. All conditions precedent set forth in the Navigators policy has been performed or has occurred.

**C. Breach of Contract – AXIS**

7.12. Monitronics has at all times complied fully with all material provisions of the AXIS policy.

7.13. AXIS has a duty to indemnify Monitronics pursuant to its policy.

7.14. AXIS has materially breached its duty under its policy to indemnify Monitronics for the settlement of the MDL, which Monitronics is legally obligated to pay.

7.15. AXIS's breach has damaged Monitronics. AXIS's failure to indemnify Monitronics

has caused Monitronics damage because Monitronics is legally obligated to pay the \$28 million MDL settlement and has already paid \$5 million towards satisfaction of the same.

7.16. All conditions precedent set forth in the AXIS policy has been performed or has occurred.

**D. Declaratory Relief — Everest**

7.17. An actual, bona fide controversy exists between Monitronics and Everest, requiring a judicial declaration by this Court of the parties' rights and duties under the Everest policies. Specifically, Everest disputes that it has an obligation to indemnify Monitronics in the MDL. Accordingly, Monitronics asks this Court to declare that Everest has a duty to indemnify Monitronics for the MDL settlement and the amount of Everest's contribution to the MDL settlement.

**E. Declaratory Relief — Navigators**

7.18. An actual, bona fide controversy exists between Monitronics and Navigators, requiring a judicial declaration by this Court of the parties' rights and duties under the Navigators policy. Specifically, Navigators disputes that it has an obligation to indemnify Monitronics in the MDL. Accordingly, Monitronics asks this Court to declare that Navigators has a duty to indemnify Monitronics for the MDL settlement and the amount of Navigators' contribution to the MDL settlement.

**F. Declaratory Relief — AXIS**

7.19. An actual, bona fide controversy exists between Monitronics and AXIS, requiring a judicial declaration by this Court of the parties' rights and duties under the AXIS policy. Specifically, AXIS disputes that it has an obligation to indemnify Monitronics in the MDL. Accordingly, Monitronics asks this Court to declare that AXIS has a duty to indemnify

Monitronics for the MDL settlement and the amount of AXIS's contribution to the MDL settlement.

### **VIII. JURY DEMAND**

8.1. Monitronics demands a trial by jury.

### **IX. RELIEF REQUESTED**

9.1. Monitronics respectfully requests that the Court enter judgment against Everest as follows:

- a. declaring that Everest has a duty to indemnify Monitronics in connection with the TCPA Actions, including the MDL;
- b. awarding Monitronics all damages caused by Everest's breach(es) of its contractual obligations under the policies it issued to Monitronics;
- c. declaring the amount Everest is obligated to pay towards the settlement of the MDL;
- d. awarding Monitronics its attorneys' fees incurred herein plus interest on those fees at the highest rate allowed by law from the date of entry of judgment until paid in full;
- e. awarding Monitronics all costs of the suit herein;
- f. awarding Monitronics pre- and post-judgment interest at the highest rates allowed by law; and
- g. awarding Monitronics all other and further relief as the Court may deem appropriate.

9.2. Monitronics respectfully requests that the Court enter judgment against Navigators as follows:

- a. declaring that Navigators has a duty to indemnify Monitronics in connection with the TCPA Actions, including the MDL;
- b. awarding Monitronics all damages caused by Navigators' breach(es) of its contractual obligations under the policy it issued to Monitronics;
- c. declaring the amount Navigators is required to pay towards settlement of the MDL;

- d. awarding Monitronics its attorneys' fees incurred herein plus interest on those fees at the highest rate allowed by law from the date of entry of judgment until paid in full;
- e. awarding Monitronics all costs of the suit herein;
- f. awarding Monitronics pre- and post-judgment interest at the highest rates allowed by law; and
- g. awarding Monitronics all other and further relief as the Court may deem appropriate.

9.3. Monitronics respectfully requests that the Court enter judgment against AXIS as follows:

- a. declaring that AXIS has a duty to indemnify Monitronics in connection with the TCPA Actions, including the MDL;
- b. awarding Monitronics all damages caused by AXIS's breach(es) of its contractual obligations under the policy it issued to Monitronics;
- c. declaring the amount AXIS is required to pay towards settlement of the MDL;
- d. awarding Monitronics its attorneys' fees incurred herein plus interest on those fees at the highest rate allowed by law from the date of entry of judgment until paid in full;
- e. awarding Monitronics all costs of the suit herein;
- f. awarding Monitronics pre- and post-judgment interest at the highest rates allowed by law; and
- g. awarding Monitronics all other and further relief as the Court may deem appropriate.

Dated: August 7, 2018.

Respectfully submitted,

By: /s/ Amy Elizabeth Stewart

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