

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

CERTAIN UNDERWRITERS AT LLOYD'S,
LONDON, SEVERALLY SUBSCRIBING TO
POLICY NUMBER ESD00104475,

Plaintiffs,

vs.

Case No.

WUNDERLAND GROUP, LLC, an Illinois
corporation; MICHAEL BAWCUM, an
individual; SHARAM KHOSRAVIPOUR, an
individual; ADVANCED PERSONNEL, INC.,
an Illinois corporation; and TEKSYSTEMS,
INC., a Maryland corporation,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT

NOW COME Plaintiffs, Certain Underwriters at Lloyd's, London, Severally Subscribing to Policy Number ESD00104475 ("Underwriters"), by and through their attorneys, Hinshaw & Culbertson LLP, and for their Complaint for Declaratory Judgment against Defendants Advanced Personnel, Inc.; WunderLand Group, LLC ("WunderLand"); Michael Bawcum; Sharam Khosravipour; and TEKsystems, Inc, they state as follows:

1. At all times relevant hereto, Underwriters issued insurance policies in the State of Illinois.

2. At all times relevant hereto, WunderLand was a limited liability corporation organized under the laws of the State of Illinois, with its principal place of business located in Chicago, Illinois. Upon information and belief, each of WunderLand's members is a citizen of Illinois.

3. Upon information and belief and at all times relevant hereto, Bawcum was an Illinois citizen, residing at 2846 Easton Street, Downers Grove, Illinois 60515.

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4. Upon information and belief and at all times relevant hereto, Khosravipour was an Illinois citizen, residing at 1735 W. Diversey Parkway #116, Chicago, Illinois 60614.

5. At all times relevant hereto, Advanced Personnel was an Illinois corporation with its principal place of business located at 111 Jackson Blvd., Suite 1400, Chicago, Illinois 60604. Advanced Personnel is a holding company for a group of entities engaged in the business of personnel staffing.

6. At all times relevant hereto, TEKsystems has been a Maryland corporation with its principal place of business located in the State of Maryland. TEKsystems is registered to do business in Illinois and maintains an office at 1501 E. Woodfield Road, Suite 110W, Schaumburg, Illinois 60173. TEKsystems is named herein as a nominal defendant.

JURISDICTION

7. This court has jurisdiction because Underwriters conduct business in Illinois, Advanced Personnel and WunderLand are incorporated in and have their principal places of business in Chicago, Illinois, Bawcum and Khosravipour reside in Chicago, Illinois, and TEKsystems is registered to do business in Illinois and does so.

8. An actual controversy exists between Underwriters, WunderLand, Bawcum, Khosravipour, Advanced Personnel and TEKsystems, and by the terms and provisions of Section 2-701 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-701, this Court is vested with the authority to declare the rights and liabilities of the parties hereto and to grant such further and other relief as may be necessary.

VENUE

9. Venue is proper pursuant to 735 ILCS 5/2-101(1) and (2) because Advanced Personnel, WunderLand, Bawcum, Khosravipour, and TEKsystems reside in Cook County,

Illinois, and because at least some part of the transaction out of which this cause of action arose occurred in Cook County.

THE UNDERWRITERS POLICY

10. Underwriters issued a Cyber, Privacy and Media Risks policy (the "Policy") to Advanced Personnel, policy no. ESD00104475, effective from December 31, 2014 until December 31, 2015. (A true and correct copy of the Declarations and Policy are attached hereto as **Exhibit A**).

11. The Policy lists "Wunderland LLC" on the "Named Insured Schedule," dated December 17, 2014. (A true and correct copy of the Named Insured Schedule is attached hereto as part of **Exhibit A**).

12. On information and belief, "Wunderland LLC" and "WunderLand Group, LLC" are the same entity.

13. The Policy provides in relevant part¹:

INSURING CLAUSE 4: MULTIMEDIA LIABILITY AND ADVERTISING INJURY

* * *

SECTION B: INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay . . . as a result of any **claim** first made against **you** . . . and notified to us during the **period of the policy** for any:

* * *

b) misappropriation of a trade secret; . . .

* * *

arising out of **media content** or **user generated content**.

¹ Terms in boldface are defined in the Policy.

[Policy Page 2.]

* * *

SECTION C: INVASION OF RIGHTS OF PRIVACY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay . . . as a result of any **claim** first made against **you** . . . and notified to **us** during the **period of the policy** for any:

- a) 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; or
- b) breach of agreement, breach of confidentiality or promissory estoppel, in connection with the failure to maintain the confidentiality of a source or materials furnished by a source or the failure to portray a source or a subject in a certain light;

arising out of **media content** or **user generated content**.

[Policy Page 2.]

SECTION D: CONTENT LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay . . . as a result of any **claim** first made against **you** . . . and notified to **us** during the **period of the policy** for any negligent act, error, omission, advice, misstatement or misrepresentation arising out of **media content** or **user generated content**.

[Policy Page 2.]

* * *

DEFINITIONS

14. **“Media content”**

any content including but not limited to **your** website, chat rooms, tweets, bulletin boards, databases, software and any posting through a social media channel.

* * *

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25. **“User generated content”**

means any content including, but not limited to, content disseminated through websites, social networks, chat rooms, bulletin boards, databases, blogs or mobile phones which is not created by **you** or on **your** behalf.

* * *

28. **“You/your”**

means:

- a) the company named as the Insured in the Declarations, or any **subsidiary**; and
- b) any past, present or future **senior executive officer** or **employee** of the company named as the Insured in the Declarations, or any **subsidiary**.

[Policy Page 4-5.]

* * *

EXCLUSIONS

We will not:

- a) make any payments on **your** behalf for any **claim**; or
- b) incur any **costs and expenses**; or
- c) reimburse **you** for any **loss, rectification costs**, fees or other costs sustained by **you**:

* * *

13. **Personal Liability:**

made against any past, present or future **senior executive officer** or **employee** of the company named as the Insured in the Declarations or any **subsidiary**; unless:

- a) that **claim** would have been covered under this Policy if it had been made solely against the company named as the Insured in the Declarations or any **subsidiary**; and
- b) the act or event which gave rise to the **claim** was committed by a **senior executive officer** or **employee** acting within the scope of their duties as a **senior executive**

officer or employee including **corporate blogging**, when the act or event was committed.

* * *

17. **Uninsurable Fines**

for fines, penalties, civil or criminal sanctions, multiple, punitive or exemplary damages, unless insurable by law.

[Policy Page 5-6.]

THE TEKSYSTEMS LAWSUIT

14. On or about September 21, 2015, TEKsystems filed a Complaint for Injunctive Relief and Damages (the "Underlying Complaint") against Bawcum, Khosravipour, and WunderLand in the United States District Court, Northern District of Illinois, under case number 15 CV 08242 (the "*TEKsystems* Lawsuit"). (A true and correct copy of the Underlying Complaint is attached hereto as **Exhibit B.**)

15. The Underlying Complaint alleges that TEKsystems and WunderLand are competitors in the technology staffing field.

16. As alleged, defendants Michael Bawcum and Sharam Khosravipour were TEKsystems employees: Bawcum from approximately June 6, 2010 until June 1, 2015 and Khosravipour from approximately June 11, 2012 until August 1, 2015. Both held the position of account managers in TEKsystems' Schaumburg, Illinois office prior to departing to work at WunderLand.

17. The Underlying Complaint alleges that, as TEKsystems employees Bawcum and Khosravipour had signed and were subject to employment contracts that contained certain non-compete, non-solicit, and non-disclosure covenants.

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18. According to the Underlying Complaint, true and correct copies of Bawcum and Khosravipour's employment contracts with TEKsystems are attached to the Underlying Complaint at **Exhibit B**.

19. As alleged, Bawcum and Khosravipour's employment contracts state that the non-compete, non-solicit, and non-disclosure covenants survive their termination from TEKsystems.

20. The allegations in the Underlying Complaint focus on a new product line TEKsystems was developing to increase its presence in the digital and creative IT staffing market.

21. The Underlying Complaint alleges that as account managers, Bawcum and Khosravipour placed consultants with digital, creative, and interactive skill sets and were privy to clients who might utilize the new digital and creative staffing services.

22. The Underlying Complaint further alleges that Bawcum and Khosravipour were also included in meetings and communications related to the business development and marketing strategy of the digital and creative staffing line.

23. The Underlying Complaint concludes that WunderLand's employment of Bawcum and Khosravipour as account managers breaches the non-compete provisions of their employment contracts and has or will result in the inevitable disclosure of TEKsystems' confidential and trade secret information.

24. The Underlying Complaint alleges that Bawcum and Khosravipour misappropriated TEKsystems' trade secrets.

25. TEKsystems alleges in the Underlying Complaint that Bawcum and Khosravipour had access to information and "each took with him" trade secrets:

47. By the fact of their employment with TEKsystems, and the knowledge they derived therefrom, Bawcum and Khosravipour

each took with him upon his resignation TEKsystems' sensitive, confidential, proprietary and trade secret information.

48. In particular, Bawcum and Khosravipour each took with him knowledge regarding candidates' preferences, work and salary histories, TEKsystems' clients, the contact persons of those clients, the idiosyncrasies of the clients/contact persons, the clients' recruiting/placement needs, the account managers' assessment of the clients' future needs and plans for meeting those needs, and TEKsystems business development and marketing strategies for its digital and creative line of business.

26. The Underlying Complaint does not allege that Bawcum or Khosravipour took or copied physical or digital confidential information or trade secrets prior to their departure.

27. The Underlying Complaint seeks injunctive relief to enjoin Bawcum and Khosravipour from continuing to breach their employment contracts and from violating the Illinois Uniform Trade Secret Act, 765 ILCS 1065/1, and to enjoin WunderLand from continuing to interfere with Bawcum and Khosravipour's employment contracts.

28. The Underlying Complaint also seeks actual damages, punitive damages, attorneys' fees and costs.

ADVANCED PERSONNEL'S TENDER

29. On or about September 22, 2015, Advanced Personnel provided notice of the claim to Underwriters through Advanced Personnel's broker, Assurance Agency, Ltd.

30. On or about October 12, 2015, Underwriters acknowledged receipt of the claim and reserved the right to review coverage for the claim.

31. By letter dated December 15, 2015, Underwriters advised Bawcum, Khosravipour and WunderLand that Underwriters owed no duty to defend or indemnify Bawcum, Khosravipour or WunderLand in connection with the Underlying Complaint, based on the Policy's terms, conditions and exclusions.

32. Underwriters filed this Complaint for Declaratory Judgment thereafter.

COUNT I – DECLARATORY RELIEF AS TO BAWCUM

33. Underwriters adopt and reallege the allegations in paragraphs 1 through 32 of their Complaint for Declaratory Judgment as paragraph 33 of Count I of their Complaint for Declaratory Judgment as if fully set forth herein.

34. Counts I and III of the Underlying Complaint are directed solely against Bawcum.

35. Count I of the Underlying Complaint is for Breach of Contract.

36. Count III of the Underlying Complaint is for Misappropriation of Trade Secrets.

37. Underwriters seek a declaration that they have no duty to defend or indemnify Bawcum for his alleged breach of contract because the Policy contains no clause that could possibly provide coverage for Bawcum’s alleged breach of his employment contract with TEKsystems.

38. Underwriters seek a declaration that they have no duty to defend or indemnify Bawcum for his alleged misappropriation of trade secrets because the Policy provides coverage for misappropriation of trade secrets only if the misappropriation of trade secrets is “arising out of **media content** or **user generated content**” and the Underlying Complaint does not allege that Bawcum’s misappropriation of trade secrets arose out of “media content” or “user generated content,” as those terms are defined in the Policy.

39. The Policy exclusion for “Personal Liability” provides that the Policy does not cover any claim:

made against any past, present or future **senior executive officer** or **employee** of the company named as the Insured in the Declarations or any **subsidiary**; unless:

- a) that **claim** would have been covered under this Policy if it had been made solely against the company named as the Insured in the Declarations or any **subsidiary**; and

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40. Underwriters seek a declaration that they have no duty to defend or indemnify Bawcum for any personal liability he might incur as a result of the *TEKsystems* Lawsuit for the alleged breach of his employment contract because the Policy excludes coverage for personal liability for employees. Although there are limitations to this exclusion, the relevant limitation *supra* is inapplicable because the count for breach of Bawcum’s employment contract by Bawcum could not have been brought solely against WunderLand or Advanced Personnel.

COUNT II – DECLARATORY RELIEF AS TO KHOSRAVIPOUR

41. Underwriters adopt and reallege the allegations in paragraphs 1 through 32 of their Complaint for Declaratory Judgment as paragraph 41 of Count II of their Complaint for Declaratory Judgment as if fully set forth herein.

42. Counts II and IV of the Underlying Complaint are directed solely against Khosravipour.

43. Count II of the Underlying Complaint is for Breach of Contract.

44. Count IV of the Underlying Complaint is for Misappropriation of Trade Secrets.

45. Underwriters seek a declaration that they have no duty to defend or indemnify Khosravipour for his alleged breach of contract because the Policy contains no clause that could possibly provide coverage for Khosravipour’s alleged breach of his employment contract with *TEKsystems*.

46. Underwriters seek a declaration that they have no duty to defend or indemnify Khosravipour for his alleged misappropriation of trade secrets because the Policy provides coverage for misappropriation of trade secrets only if the misappropriation of trade secrets is “arising out of **media content** or **user generated content**” and the Underlying Complaint does not allege that Khosravipour’s misappropriation of trade secrets arose out of “media content” or “user generated content,” as those terms are defined in the Policy.

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47. The Policy exclusion for “Personal Liability” provides that the Policy does not cover any claim:

made against any past, present or future **senior executive officer** or **employee** of the company named as the Insured in the Declarations or any **subsidiary**; unless:

- a) that **claim** would have been covered under this Policy if it had been made solely against the company named as the Insured in the Declarations or any **subsidiary**; and

48. Underwriters seek a declaration that they have no duty to defend or indemnify Khosravipour for any personal liability he might incur as a result of the *TEKsystems* Lawsuit for the alleged breach of his employment contract because the Policy excludes coverage for personal liability for employees. Although there are limitations to this exclusion, the relevant limitation *supra* is inapplicable because the count for breach of Khosravipour’s employment contract by Khosravipour could not have been brought solely against WunderLand or Advanced Personnel.

COUNT III – DECLARATORY RELIEF AS TO WUNDERLAND

49. Underwriters adopt and reallege the allegations in paragraphs 1 through 32 of their Complaint for Declaratory Judgment as paragraph 49 of Count III of their Complaint for Declaratory Judgment as if fully set forth herein.

50. Counts V and VI of the Underlying Complaint are directed solely against WunderLand.

51. Count V of the Underlying Complaint is for Tortious Interference with Bawcum’s employment contract.

52. Count VI of the Underlying Complaint is for Tortious Interference with Khosravipour’s employment contract.

53. Underwriters seek a declaration that they have no duty to defend or indemnify WunderLand in the *TEKsystems* Lawsuit because the Policy contains no clause that could

possibly provide coverage for WunderLand's alleged tortious interference with Bawcum and Khosravipour's employment contracts with TEKsystems.

COUNT IV – DECLARATORY RELIEF AS TO PUNITIVE DAMAGES

54. Underwriters adopt and reallege the allegations in paragraphs 1 through 32 of their Complaint for Declaratory Judgment as paragraph 54 of Count IV of their Complaint for Declaratory Judgment as if fully set forth herein.

55. Policy exclusion for "Uninsurable Fines" provides that the Policy does not cover "punitive or exemplary damages, unless insurable by law."

56. Underwriters seek a declaration that they have no duty to indemnify any party for any punitive damages that might be awarded in the *TEKsystems* Lawsuit.

WHEREFORE, Plaintiffs, Underwriters, respectfully pray that this Honorable Court:

- a. Determine and adjudicate the rights and liabilities of the parties hereto with respect to the Policy;
- b. Declare that Underwriters owe no duty to defend or indemnify Bawcum or Khosravipour for breach of contract;
- c. Declare that Underwriters owe no duty to defend or indemnify Bawcum or Khosravipour for misappropriation of trade secrets;
- d. Declare that Underwriters owe no duty to defend or indemnify WunderLand for tortious interference with Bawcum or Khosravipour's employment contracts; and
- d. Grant Underwriters such other and further relief that the Court deems proper under the facts and circumstances.

Respectfully submitted,

**CERTAIN UNDERWRITERS AT
LLOYD'S, LONDON**

By: s/James H. Kallianis, Jr.
One of Their Attorneys

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