

**IN THE FEDERAL COURT FOR THE MIDDLE DISTRICT OF TENNESSEE
AT COLUMBIA**

ISABELLA INDUSTRIES, LLC; MAELYNN)	
INDUSTRIES, LLC; SANCIA)	
INDUSTRIES, LLC; AND)	
ILLUMIVAPTION, INC.,)	Case No. _____
)	
Plaintiffs.)	
)	
V.)	JURY DEMAND
)	
KINSALE INSURANCE COMPANY,)	
)	
Defendant.)	

COMPLAINT

Plaintiffs Isabella Industries, LLC; Maelynn Industries, LLC; Sancia Industries, LLC; and Illumivaption, Inc. (collectively, “Plaintiffs”) hereby initiate this action against Defendant Kinsale Insurance Company (“Defendant”) and would show the Court as follows:

INTRODUCTION

This case arises from the attempt of an insurance company to deny legal defense and coverage to its insured by claiming the insured’s claims are not covered under the insurance contract. Plaintiffs assert the insurance policy does provide insurance coverage for Plaintiffs’ claims. To the extent that coverage is unclear by the terms of the insurance policy, the insurance policy drafted by Defendant is vague, ambiguous, contradictory, illusory, and thereby unenforceable under Tennessee law. As such, Defendant has breached its insurance contract and fiduciary duty owed to the insured. Plaintiffs asks the Court to hold the insurance company accountable to its obligations by declaring that Defendant must provide coverage to Plaintiffs for the below-described actions.

PARTIES

1. Plaintiff Sancia Industries, LLC is a Tennessee Limited Liability Company with its principal address at 5908 Charlotte Pike, Suite A, Nashville, TN 37209-3182.
2. Plaintiff Maelynn Industries, LLC is a Tennessee Limited Liability Company with its principal address at 2139 Gallatin Pike N, Madison, Tennessee 37115.
3. Plaintiff Isabella Industries, LLC is a Tennessee Limited Liability Company with its principal address at 1900 Shady Brook Street, Ste. C, Columbia, Tennessee 38401.
4. Plaintiff Illumivaption Inc. is a Tennessee corporation with its principal office at 2139 Gallatin Pike N., Madison, Tennessee 37115.
5. Defendant Kinsale Insurance Company is a company doing business in Virginia.

JURISDICTION AND VENUE

6. This Court has jurisdiction over Plaintiff's Complaint under 28 U.S.C. § 1332, which provides federal district courts with original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000.00, and where the action is between citizens of different states. Here, the parties have complete diversity and the matter in controversy exceeds \$75,000.00.
7. Venue is proper pursuant to 28 U.S.C. § 1391, which provides that the action may be brought in a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated. Here, Plaintiffs filed an insurance claim with Defendant for coverage for a lawsuit filed against them in Maury County, Tennessee, for actions that allegedly occurred at their location in Maury County, Tennessee.

FACTUAL ALLEGATIONS

8. At all relevant times, Plaintiffs had a General Liability insurance policy through Defendant with policy number 0100098946-2.

9. At all relevant times, Plaintiffs had an Umbrella insurance policy through Defendant with policy number 0100099003-2.

10. Plaintiffs' two policies through Defendant are heretofore referred to as the "Policies."

11. Plaintiffs have been in business selling various vape products since 2011.

12. Plaintiffs have always paid their insurance premiums on time and been a loyal client to Defendant.

13. Plaintiffs began their insurance relationship with Defendant on November 1, 2015.

14. When Plaintiffs renewed their Policies with Defendant in October 2022, Defendant excluded batteries from the insurance coverage, despite batteries being included in Plaintiffs' coverage prior to this renewal. Defendants also increased Plaintiffs' insurance premium despite reducing their coverage.

15. Defendant led Plaintiffs to believe that the batteries were covered after the renewal.

16. Defendant did not inform Plaintiffs that it had removed batteries from the coverage and did not ask Plaintiffs prior to doing so.

17. In October 2022, nonparties Michael Schmidt and Elisha Schmidt (the "Nonparties") filed a lawsuit against Plaintiffs, alleging damages caused by batteries allegedly sold by Plaintiffs.

18. Plaintiffs filed an insurance claim with Defendant and were informed that there was no applicable coverage.

19. Defendant refused to provide Plaintiffs with coverage or a legal defense.

COUNT ONE: DECLARATORY JUDGMENT

20. Plaintiffs incorporate the above-referenced paragraphs as though fully restated.

21. Plaintiffs are entitled to a declaratory judgment, pursuant to Tenn. Code Ann. § 29-14-101 *et seq.*, declaring that:

- a. Plaintiffs had the right to rely on the good faith of the insurer and its agent;
- b. it is reasonable for the insured to assume the Policies provided the requested coverage;
- c. the Policies allow defense for Plaintiffs against the lawsuit filed against Plaintiffs by the Nonparties;
- d. Defendant has violated the Policies by failing to provide coverage and defense to Plaintiffs;
- e. Defendant must provide legal assistance to Plaintiffs in defending the lawsuit by the Nonparties; and
- f. the Defendant must provide insurance coverage for the lawsuit by the Nonparties.

**COUNT TWO: BREACH OF CONTRACT
AND BREACH OF THE COVENANT OF GOOD FATH AND FAIR DEALING**

22. Plaintiffs incorporate the above-referenced paragraphs as though fully restated.

23. Plaintiffs and Defendant had an insurance contract that ensured coverage and defense for Plaintiffs for damages arising out of Plaintiffs' business operations.

24. Plaintiffs complied with the contract by making timely payments to Defendant each month.

25. Defendant breached the contract and the covenant of good faith and fair dealing by refusing to provide the coverage and defense promised by the Policies.

26. Consequently, Plaintiff is entitled to a judgment enforcing the Policies, plus punitive damages, attorney's fees, and costs.

COUNT THREE: BREACH OF FIDUCIARY DUTY

27. Plaintiffs incorporate the above-referenced paragraphs as though fully restated.

28. Defendant owed a fiduciary duty to Plaintiffs based on trust and good faith that required Defendant to act in the best interest of Plaintiffs, its customers.

29. Defendant breached this duty by intentionally refusing to provide coverage to Plaintiffs despite knowing of the lawsuit filed against them by the Nonparties.

30. As a direct and proximate result of Defendant's breach of fiduciary duty, Plaintiffs have suffered damages and are entitled to a judgment of compensatory damages, plus punitive damages, attorney's fees, and costs.

COUNT FOUR: BAD-FAITH FAILURE TO PAY

31. Plaintiffs incorporate the above-referenced paragraphs as though fully restated.

32. Pursuant to Tenn. Code Ann. § 56-7-105, in all cases when a loss occurs and an insurance company refuses to pay the loss within 60 days after the policyholder

making a demand, the insurance company shall be liable to pay the policyholder, in addition to the loss, a sum on the liability for the loss, provided that: the refusal to pay the loss was not in good faith; the failure to pay inflicted additional expense, loss, or injury, including attorneys' fees, upon the policyholder; and provided that the additional liability be measured by the additional expense, loss, and injury.

33. Here, Defendant acted in bad faith by refusing to pay the loss that the Policies should have covered.

34. Defendant's failure to pay has caused Plaintiffs additional damages, including attorneys' fees.

35. As a direct and proximate result of Defendant's bad faith failure to pay, Plaintiffs have suffered damages and are entitled to a judgment of compensatory damages, plus punitive damages, attorney's fees, and costs.

**COUNT FOUR: VIOLATION OF
THE TENNESSEE CONSUMER PROTECTION ACT ("TCPA")**

36. Plaintiffs incorporate the above-referenced paragraphs as though fully restated.

37. The conduct of Defendants constitutes unfair and deceptive trade practices that affect the conduct of trade and commerce in violation of Tenn. Code Ann. §§ 47-18-104(a), 104(b)(5), 104(b)(7), and 104(b)(19).

38. The conduct of Defendant has caused, and was likely to cause, substantial injury that was reasonably avoidable and was not outweighed by countervailing benefits to consumers or to competition.

39. The conduct of Defendant caused Plaintiffs to suffer damages, including consequential damages.

40. Defendant acted willfully and knowingly. Treble damages are therefore appropriate under Tenn. Code Ann. § 47-18-109(a).

WHEREFORE, PREMISES CONSIDERED, PLAINTIFF PRAYS:

a. that Defendant be served with a copy of the Summons and Complaint and be required to answer within the time prescribed by law;

b. that Plaintiffs be granted a declaratory judgment against the Defendant pursuant to Tenn. Code Ann. § 29-14-101 *et seq.*, declaring that:

1. Plaintiffs had the right to rely on the good faith of the insurer and its agent;
2. it is reasonable for the insured to assume the Policies provided the requested coverage;
3. the Policies allow defense for Plaintiffs against the lawsuit filed against Plaintiffs by the Nonparties;
4. Defendant has violated the Policies by failing to provide coverage and defense to Plaintiffs;
5. Defendant must provide legal assistance to Plaintiffs in defending the lawsuit by the Nonparties; and
6. the Defendant must provide insurance coverage for the lawsuit by the Nonparties.

c. that Plaintiffs be granted a judgment against Defendant for breach of contract and breach of the covenant of good faith and fair dealing;

d. that Plaintiffs be granted a judgment against Defendant for breach of

fiduciary duty;

e. that Plaintiffs be granted a judgment against Defendant for bad-faith failure to pay;

f. that Plaintiffs be granted a judgment against Defendant for violation of the TCPA;

g. that Plaintiffs be awarded compensatory damages, punitive damages, pre-judgment interest, attorney's fees, and costs;

h. that a jury be empaneled to hear this case; and

i. for any other relief that is just under the circumstances.

Respectfully Submitted,

MCKELLAR LAW GROUP, PLLC

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Counsel for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Isabella Industries, LLC; Maelynn Industries, LLC; Sancia Industries, LLC; and Illumivaption, Inc.

(b) County of Residence of First Listed Plaintiff Maury
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

McKellar Law Group, 117 28th Ave N, Nashville TN 37203, (615) 866-9699

DEFENDANTS

Kinsale Insurance Company

County of Residence of First Listed Defendant Henrico
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Tenn. Code Ann. § 56-7-105; Tenn. Code Ann. §§ 47-18-104(a), 104(b)(5), 104(b)(7), and 104(b)(19); Tenn. Code Ann. § 29-14-101 et seq.

Brief description of cause:

Defendant insurance company breached a contract and its fiduciary duty by denying legal defense and insurance coverage to Plaintiffs

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ >\$75,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

04/16/2023

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.