

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

FILED  
10/10/2018 5:45 PM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL

MONDELÉZ INTERNATIONAL, INC., Plaintiff,

v.

ZURICH AMERICAN INSURANCE COMPANY, Defendant.

2018L011008

No. \_\_\_\_\_

**CIVIL ACTION COVER SHEET - CASE INITIATION**

A Civil Action Cover Sheet - Case Initiation shall be filed with the complaint in all civil actions. The information contained herein is for administrative purposes only and cannot be introduced into evidence. Please check the box in front of the appropriate case type which best characterizes your action. Only one (1) case type may be checked with this cover sheet.

Jury Demand  Yes  No

**PERSONAL INJURY/WRONGFUL DEATH**

CASE TYPES:

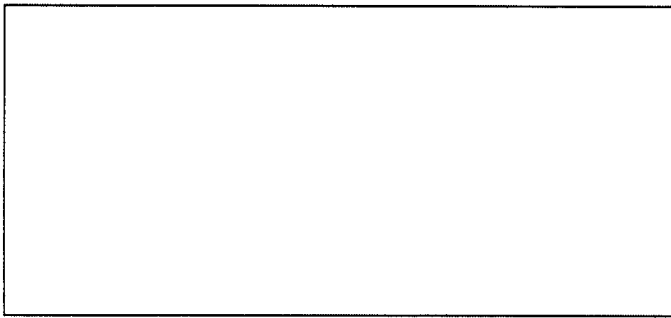
- 027 Motor Vehicle
- 040 Medical Malpractice
- 047 Asbestos
- 048 Dram Shop
- 049 Product Liability
- 051 Construction Injuries  
(including Structural Work Act, Road Construction Injuries Act and negligence)
- 052 Railroad/FELA
- 053 Pediatric Lead Exposure
- 061 Other Personal Injury/Wrongful Death
- 063 Intentional Tort
- 064 Miscellaneous Statutory Action  
(Please Specify Below\*\*)
- 065 Premises Liability
- 078 Fen-phen/Redux Litigation
- 199 Silicone Implant

**TAX & MISCELLANEOUS REMEDIES**

CASE TYPES:

- 007 Confessions of Judgment
- 008 Replevin
- 009 Tax
- 015 Condemnation
- 017 Detinue
- 029 Unemployment Compensation
- 031 Foreign Transcript
- 036 Administrative Review Action
- 085 Petition to Register Foreign Judgment
- 099 All Other Extraordinary Remedies

By: David M. Kroeger, JENNER & BLOCK LLP (05003)  
(Attorney) (Pro Se)



(FILE STAMP)

**COMMERCIAL LITIGATION**

CASE TYPES:

- 002 Breach of Contract
- 070 Professional Malpractice  
(other than legal or medical)
- 071 Fraud (other than legal or medical)
- 072 Consumer Fraud
- 073 Breach of Warranty
- 074 Statutory Action  
(Please specify below.\*\*)
- 075 Other Commercial Litigation  
(Please specify below.\*\*)
- 076 Retaliatory Discharge

**OTHER ACTIONS**

CASE TYPES:

- 062 Property Damage
- 066 Legal Malpractice
- 077 Libel/Slander
- 079 Petition for Qualified Orders
- 084 Petition to Issue Subpoena
- 100 Petition for Discovery

\*\* \_\_\_\_\_

Primary Email: dkroeger@jenner.com

Secondary Email: jmathias@jenner.com

Tertiary Email: \_\_\_\_\_

**Pro Se Only:**  I have read and agree to the terms of the Clerk's Office Electronic Notice Policy and choose to opt in to electronic notice form the Clerk's Office for this case at this email address: \_\_\_\_\_

**DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**

FILED DATE: 10/10/2018 5:45 PM 2018L011008

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY \_\_\_\_\_ DEPARTMENT/LAW DIVISION \_\_\_\_\_

MONDELÉZ INTERNATIONAL, INC., Plaintiff,

v.

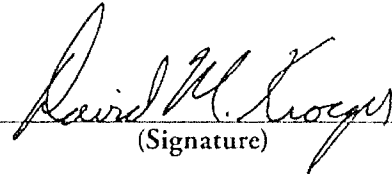
ZURICH AMERICAN INSURANCE COMPANY, Defendant.

2018L011008

No. \_\_\_\_\_

JURY DEMAND

The undersigned demands a jury trial.

  
\_\_\_\_\_  
(Signature)

Atty. No.: 05003  
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Atty. for: Plaintiff, Mondelēz International, Inc.  
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Telephone: 312.923.2861  
Primary Email: dkroeger@jenner.com  
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Tertiary Email: \_\_\_\_\_

Dated: October 10, 2018

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

MONDELÉZ INTERNATIONAL, INC., )  
 )  
Plaintiff, )  
 )  
vs. ) No. 2018L011008  
 )  
ZURICH AMERICAN INSURANCE COMPANY, ) Jury Demanded  
 )  
Defendant. )

**COMPLAINT**

Mondelēz International, Inc. (“MDLZ”), through its counsel, complains as follows against Zurich American Insurance Company (“Zurich”):

1. In this insurance coverage action, MDLZ seeks relief for Zurich’s breaches of its contractual obligations to MDLZ under an all-risk property insurance policy, Zurich’s failure to honor promises that induced MDLZ to act to its detriment, and Zurich’s bad faith conduct.

**Jurisdiction and Venue**

2. This Court has personal jurisdiction over Zurich pursuant to 735 ILCS 5/2-209(a)(4), in that Zurich “contract[ed] to insure any person, property or risk located within this State at the time of contracting.”

3. Venue is proper in this Circuit pursuant to 735 ILCS 5/2-101, in that a substantial part of the transactions giving rise to the claim occurred here.

**The Parties**

4. MDLZ is one of the world’s largest snack companies. MDLZ manufactures and markets snack food and beverage products for consumers in approximately 165 countries around the world. Its portfolio includes many iconic snack brands: Nabisco, Oreo, LU and belVita

biscuits; Cadbury, Milka, Cadbury Dairy Milk and Toblerone chocolate; Trident gum; Halls candy and Tang powdered beverages.

5. Zurich is an insurance company organized under the laws of New York, with its headquarters in Schaumburg, Illinois. Zurich is part of the Zurich Insurance Group.

#### **Factual Background**

6. Zurich sold Property Insurance Policy No. PPR 5834380-04 (the “Policy”) to MDLZ. (The Policy is voluminous, and Zurich is already in possession of a copy, so a copy is being maintained at the offices of counsel for MDLZ and will be made available to the Court and Zurich upon request.)

7. The Policy provides annual coverage incepting November 1, 2016, for “all risks of physical loss or damage” to MDLZ’s property, specifically including “**physical loss or damage to electronic data, programs**, or software, including physical loss or damage caused by the malicious introduction of a machine code or instruction . . . .”

8. The Policy also specifically provided other types of coverage, including but not limited to “TIME ELEMENT” coverage, including for “Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the period of interruption directly resulting from the failure of the Insured’s **electronic data processing equipment or media** to operate” resulting from malicious cyber damage.

9. On June 27, 2017, MDLZ fell victim to two separate malicious introductions of “malware” machine code or instruction, which later came to be referred to by some sources as “NotPetya,” into two of its servers at different physical locations and at different times. The two malware introductions/occurrences spread from these two servers, stole credentials of numerous

users, propagated across the MDLZ network, and rendered permanently dysfunctional approximately 1700 of MDLZ's servers and 24,000 of its laptops.

10. As a result of the damage caused both to its hardware and operational software systems, MDLZ incurred property damage, commercial supply and distribution disruptions, unfulfilled customer orders, reduced margins, and other covered losses aggregating well in excess of \$100,000,000.

11. MDLZ gave prompt notice to Zurich and thereafter worked with Zurich personnel to adjust the insurance claim. As part of this effort, MDLZ provided Zurich with (i) voluminous amounts of information, including information quantifying and substantiating the extent of MDLZ's losses; and (ii) access to MDLZ employees as well as consultants retained by MDLZ to provide explanations pertinent to its claim.

12. During this time, Zurich publicly and, on information and belief, in its non-public dealings with actual and prospective policyholders who were considering the purchase or renewal of insurance coverage from Zurich, portrayed the NotPetya malware as a form of "ransomware" that merited the continued (if not increased) purchase of insurance coverage from Zurich. For example, on March 5, 2018, Alison Martin, Group Chief Risk Officer for the Zurich Insurance Group, published an article containing the following statement:

"Cybersecurity risks are also growing, both in their prevalence and in their disruptive potential. Attacks against businesses have almost doubled in five years, and incidents that would once have been considered extraordinary are becoming more and more commonplace. The financial impact of cybersecurity breaches is rising, and some of the largest costs in 2017 related to ransomware attacks, which accounted for 64% of all malicious emails. Notable examples included the WannaCry attack—which affected 300,000 computers across 150 countries—and NotPetya, which caused quarterly losses of USD 300 million for a number of affected businesses."

13. Nevertheless, by letter dated June 1, 2018, Zurich informed MDLZ that it was denying coverage under the Policy based on a single Policy exclusion, Exclusion B.2(a), which provides:

B. This Policy excludes loss or damage directly or indirectly caused by or resulting from any of the following regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss:

- 2) a) hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack by any:
  - (i) government or sovereign power (de jure or de facto);
  - (ii) military, naval, or air force; or
  - (iii) agent or authority of any party specified in i or ii above.

Zurich asserted no other exclusion and stated no other ground for denying coverage under the Policy in its June 1, 2018 denial letter.

14. As an insurer seeking to deny insurance coverage on the basis of an exclusion, Zurich bears the burden of proving the applicability of the single exclusion (Exclusion B.2(a)) on which it based its June 1, 2018 denial of coverage.

15. Zurich's invocation of a "hostile or warlike action" exclusion to deny coverage for malicious "cyber" incidents was, on information and belief, unprecedented. Indeed, and also on information and belief, the purported application of this type of exclusion to anything other than conventional armed conflict or hostilities was unprecedented. Accordingly, on this basis alone, Zurich wrongfully denied coverage to MDLZ.

16. Furthermore, the loss and damage for which MDLZ claims coverage under the Policy did not result from a cause or event excluded under Exclusion B.2(a) of the Policy. The two incursions of malicious code or instruction into MDLZ's computers did not constitute "hostile or warlike action," as required by Exclusion B.2(a). Nor was the loss and damage for

which MDLZ claims coverage under the Policy directly or indirectly caused by “hostile or warlike action.” In the alternative, Exclusion B.2(a) is vague and ambiguous, particularly given Zurich’s failure to modify that historical language to specifically address the extent to which it would apply to cyber incidents, and therefore must be interpreted in favor of coverage.

17. On information and belief, Zurich senior management itself recognized that the June 1, 2018 coverage denial was wrongful and improper, and further recognized the potential for MDLZ to initiate immediate litigation that would publicize Zurich’s ill-advised coverage denial in a manner that would adversely impact its dealings with actual and prospective policyholders who were considering the purchase or renewal of insurance coverage from Zurich.

18. Accordingly, to induce MDLZ not to initiate immediate coverage litigation, and in what now appears to be an improper effort to allow Zurich to try to avoid publicity for and/or “mend” its June 1, 2018 coverage denial, Zurich promised MDLZ that it would rescind its June 1, 2018 declination of coverage and resume adjustment of MDLZ’s insurance claim. These promises were intended to convince MDLZ to refrain from filing immediate litigation.

19. On July 18, 2018, Zurich sent an email to MDLZ that “formally rescind[ed]” its coverage denial and promised to resume the adjustment of MDLZ’s insurance claim. On July 24, 2018, Zurich sent an email to MDLZ committing to advance a \$10,000,000 partial payment toward MDLZ’s insurance claim. Zurich initially sought to place conditions on the advance, but after pushback from MDLZ a few days later Zurich’s Head of Property Claims sent an email representing to MDLZ that the promised advance would be unconditional and “not subject to a ‘claw back’ provision.”

20. In reliance upon Zurich’s representations concerning (i) the rescission of its denial of coverage based upon Exclusion B.2(a); and (ii) the resumption of its adjustment of MDLZ’s

insurance claim, including the advance of an unconditional \$10,000,000 partial payment, MDLZ refrained to its detriment from instituting immediate litigation challenging the June 1, 2018 denial letter. MDLZ instead agreed to meet with Zurich representatives regarding adjustment and payment of its insurance claim. MDLZ would not have done so were it not for these explicit representations and promises from Zurich.

21. However, despite “formally rescind[ing]” its coverage denial and promising to resume the adjustment of MDLZ’s insurance claim (including advancement of an unconditional \$10,000,000 partial payment), Zurich has in all material respects continued to behave as if it were still asserting the applicability of Exclusion B.2(a) to deny coverage entirely to MDLZ. In particular, Zurich: (i) refused to advance an unconditional partial payment of \$10,000,000 on MDLZ’s insurance claim; (ii) refused to make any other claim payment whatsoever; and (iii) otherwise failed to resume and finalize the adjustment of MDLZ’s claim.

22. By at least October 2018, MDLZ’s patience had run out, and Zurich knew that. With knowledge that MDLZ was planning to file this lawsuit if Zurich did not take steps to immediately resolve its insurance claim, Zurich on October 9, 2018 sent MDLZ a letter purporting to “reassert” its June 1, 2018 declination of coverage based on Exclusion B.2(a). Zurich’s “reassertion” did not cite any new material facts or developments occurring since Zurich’s unequivocal “rescission” of its denial of coverage on July 18, 2018. Zurich’s October 9 letter also belatedly sought to raise new coverage defenses in an improper effort to “mend” its June 1, 2018 declination of coverage, which had consciously omitted any other possible grounds for denying coverage, thereby waiving them. Zurich was aware of all of these purported additional coverage defenses as of June 1, 2018, but elected not to include them in its coverage



denial letter of that date. Under the circumstances, Zurich's attempted October 9, 2018 "reassertion" of its denial of coverage is null, void and without effect.

**COUNT I**  
**Breach of Contract**  
**(Wrongful Refusal to Pay Insurance Claim)**

23. MDLZ restates and incorporates paragraphs 1 through 22 above as if fully set forth herein.

24. MDLZ provided and Zurich received timely notice of MDLZ's insured losses.

25. Zurich investigated and/or had the opportunity to investigate MDLZ's claim for more than 11 months, and to fairly explore whatever bases it may have believed it had for denying or limiting coverage. Zurich based its June 1, 2018 declination of coverage on a single ground: Exclusion B.2(a). Its denial letter asserted no other basis for the denial of coverage.

26. Zurich's June 1, 2018 denial of coverage was wrongful and constituted a breach of its obligations under the Policy.

27. Zurich's purported "reassertion" of its denial of coverage on October 9, 2018, was also wrongful and constituted a breach of its obligations under the Policy.

28. As a direct and proximate result of Zurich's breaches of contract, MDLZ has been deprived of the benefits of the insurance coverage sold by Zurich, and has incurred at least \$100,000,000 in damages as a result, subject to any applicable deductibles.

**COUNT II**  
**Breach of Contract**  
**(Wrongful Refusal to Withdraw Coverage Denial and Pay Insurance Claim)**

29. MDLZ restates and incorporates paragraphs 1 through 22 above as if fully set forth herein.

30. In exchange for MDLZ refraining from the immediate filing of litigation that would have challenged the June 1, 2018 coverage denial and publicized Zurich's wrongful interpretation of Exclusion B.2(a) to the insurance marketplace, and in particular actual and prospective policyholders, Zurich made contractual commitments to MDLZ (i) to rescind its June 1, 2018 declination of coverage; and (ii) resume adjustment of MDLZ's insurance claim, including the immediate advancement of an unconditional partial payment of \$10,000,000 to MDLZ.

31. Zurich has refused to honor these commitments, and has instead continued to behave in all material respects as if it were still denying coverage to MDLZ based on Exclusion B.2(a). Zurich has refused to make any payment whatsoever on MDLZ's insurance claim, including the unconditional partial payment of \$10,000,000 it had committed in writing to advance.

32. As a direct and proximate result of Zurich's breaches of contract, MDLZ has been deprived of the benefits of the contractual promises made by Zurich and accepted by MDLZ, and has incurred damages as a result.

**COUNT III**  
**Promissory Estoppel**

33. MDLZ restates and incorporates paragraphs 1 through 22 above as if fully set forth herein.

34. Zurich unambiguously promised MDLZ that it was (i) rescinding its June 1, 2018 declination of coverage; and (ii) resuming adjustment of MDLZ's insurance claim, including the immediate advance of an unconditional partial payment of \$10,000,000 to MDLZ. Zurich did so for the purpose of, inter alia, inducing MDLZ not to file immediate litigation challenging its June 1, 2018 denial of coverage.

35. MDLZ relied on Zurich's promises by refraining from the filing of immediate litigation that would have, inter alia, publicized Zurich's wrongful interpretation of Exclusion B.2(a) to the insurance marketplace, and in particular actual and prospective policyholders of Zurich.

36. MDLZ's reliance was expected and foreseeable by Zurich.

37. MDLZ relied to its detriment on Zurich's promises, none of which have been fulfilled, and has been damaged as a result.

38. Having induced MDLZ to rely to its detriment upon explicit promises, Zurich should be held to those promises and should be, inter alia, estopped both from (i) reasserting Exclusion B.2(a) as a basis for denying coverage; and (ii) asserting any other additional ground for denying coverage which could have been asserted on June 1, 2018.

**COUNT IV**  
**Vexatious and Unreasonable Conduct**  
**Illinois Insurance Code Section 155**

39. MDLZ restates and incorporates paragraphs 1 through 38 above as if fully set forth herein.

40. Zurich has acted vexatiously and unreasonably by, among other things, the following, all in violation of 215 ILCS 5/155:

- a. improperly denying MDLZ's insurance claim on June 1, 2018;
- b. refusing to honor its explicit promises to MDLZ to (i) rescind its June 1, 2018 declination of coverage; and (ii) resume adjustment of MDLZ's insurance claim, including the immediate advancement of an unconditional partial payment of \$10,000,000 to MDLZ; and
- c. Improperly "reasserting" its denial of coverage on October 9, 2018.

41. MDLZ has been damaged by Zurich's vexatious and unreasonable conduct, in that it has effectively been denied the benefits of the insurance coverage for which it contracted and for which MDLZ collected a premium. MDLZ has also been improperly forced to incur the burden, expense and further disruption of bringing and pursuing this action.

**Prayer for Relief**

WHEREFORE, MDLZ respectfully requests that the Court grant it the following:

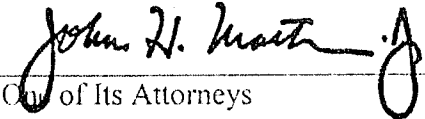
1. An award of the damages that MDLZ has sustained, in the amount of at least \$100,000,000, subject to any applicable deductibles, and such other amounts to be determined at trial;
2. An order enforcing Zurich's promises to MDLZ to (i) rescind its June 1, 2018 declination of coverage; and (ii) resume adjustment of MDLZ's insurance claim, including the immediate advancement of an unconditional partial payment of \$10,000,000 to MDLZ, including barring Zurich from both (i) reasserting Exclusion B.2(a) as a basis for denying coverage; and (ii) asserting any other additional ground for denying coverage which could have been asserted on June 1, 2018; and further declaring null, void and without effect Zurich's attempted October 9, 2018 "reassertion" of its denial of coverage;
3. An award of pre-judgment and post-judgment interest on MDLZ's damages, in the full amount permitted by law;
4. An award of the costs, including attorneys' fees, that MDLZ incurs in connection with bringing and pursuing this action, along with the maximum statutory penalty that 215 ILCS 5/155 allows; and
5. Such additional relief in MDLZ's favor as the Court deems appropriate.

**Jury Demand**

MDLZ demands a trial by jury on all issues triable to a jury.

MONDELÉZ INTERNATIONAL, INC.

Dated: October 10, 2018

By:   
\_\_\_\_\_  
One of Its Attorneys

John H. Mathias, Jr.  
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
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Plaintiff, )

vs. )

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No. 2018L011008

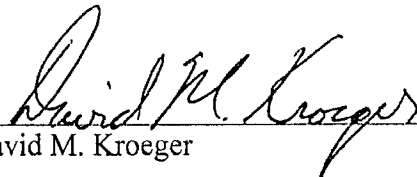
Jury Demanded

**AFFIDAVIT PURSUANT TO ILLINOIS SUPREME COURT RULE 222(b)**

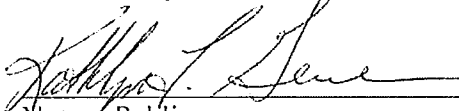
David M. Kroeger, being first duly sworn on oath, states as follows:

1. I am a partner at Jenner & Block LLP and serve as counsel for Mondelēz International, Inc., the Plaintiff in this action. I have personal knowledge of the facts set forth in this affidavit, which is made pursuant to Illinois Supreme Court Rule 222(b).

2. I certify that the total of money damages sought in the complaint by Plaintiff Mondelēz International, Inc. exceeds \$50,000.

  
\_\_\_\_\_  
David M. Kroeger

Subscribed and sworn to before me  
this 10th day of October 2018

  
\_\_\_\_\_  
Notary Public

