IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

| | |
|---|---|
| MARIA BROMLEY; KLEBER PAUTA; and [98 OTHERS], Plaintiffs | ) |
| v. | ) No. 23-cv-1227 |
| SXSW, LLC, Defendant | ) Filed: December 16, 2023 |

# **COMPLAINT**

* * *

3. Plaintiff Maria Bromley ("Bromley") is an individual and a citizen of the Commonwealth of Massachusetts.

4. Plaintiff Kleber Pauta ("Pauta") is an individual and a citizen of Colorado.

5-103. [Identifying 98 additional individual plaintiffs].

* * *

107. Defendant hosts an annual multi-day culture festival, "South by Southwest," in Austin, TX.

108. The Festival consists of multiple "tracks" of programming relating to film, music, gaming, television, interactive media, and musical performances.

109. To gain admission to the Festival and programming, attendees must purchase what SXSW refers to as "credentials." Credentials include wristbands, tickets, passes, or badges.

110. SXSW offers "badges" for each track. A badge gives primary access to events on that track and secondary access to other events, as well as communal amenities such as food courts and exhibitions. The cost of a badge varies with date of purchase and whether additional options were purchased.

111. SXSW offers "Platinum" badges granting primary access to all events. A Platinum badge for the 2020 Festival cost approximately $ 1700, depending on date of purchase.

112. Attendees also may purchase wristbands, costing upwards of $ 225.

113. Accounting for travel and room, attendees expect to spend thousands of dollars for attending the entire festival, less if they stay for less than the full festival.

114. Every plaintiff purchased tickets, passes, badges, and/or for some or all days of the festival, at varying levels.

115. On or about February 3, 2020, Bromley purchased a "platinum" badge for SXSW for $ 1670--$ 1600 for registration and $ 70 for meals and merchandise.

116. On or about November 25, 2019, Pauta purchased a badge for approximately $ 1020.

117-195. [Describe 98 remaining plaintiffs' purchases; each purchased different badges, wristbands, and other credentials, paying in a range of $ 825 to $2650.]

196. The 2020 Festival was scheduled to take place from March 13-March 22, 2020.

197. Despite reports of COVID-19 spreading during early 2020, on February 28, 2020, SXSW informed the public that the 2020 Festival would "proceed as planned" and that despite some cancellations, the event was on par with past years.

198. SXSW told the public they could continue to purchase tickets.

199. On March 6, 2020, SXSW notified all attendees that the Festival had been cancelled, pursuant to orders of the City of Austin.

200. Following cancellation, Bromley contacted SXSW and requested a refund on her purchase.

201. Following cancellation, Pauta contacted SXSW and requested a refund of her purchase.

[202-298]. [Describe that each of the 98 additional plaintiffs contacted SXSW and requested a refund].

299. On March 12, 2020, SXSW announced the decidedly un-American stance of declining refund requests, shifting the burden onto festivalgoers who paid money to SXSW for a festival that never occurred.

300. Rather than refunds, SXSW offered purchasers the ability to "defer" attendance to any festival from 2021 through 2026, at the rate of 50 % of the walk-up (day-of-event) purchase rate for the chosen year's festival.

301. Bromley does not know whether she will attend future festivals.

302. Pauta does not know whether she will attend future festivals.

303-401. [Allegations that each of remaining 98 plaintiffs does not know whether they will attend future festivals].

402. At the time it cancelled the 2020 Festival and declined refunds, SXSW acknowledged that it did not know if it would hold future festivals or when.

403. Each plaintiff is entitled to a refund of the full amount paid for credentials for the 2020 Festival.

## Count I: Violation of Sherman Antitrust Act (15 U.S.C. § 1)

## Count II: Breach of Contract (Texas Law)

## Count III: Unjust Enrichment (Texas Law)

## Count IV: Conversion (Texas Law)

## Prayer for Relief

Plaintiff prays the court provide relief, including, but not limited to,

1. Compensatory Damages reflecting loss of money paid for credentials;
2. Interest;
3. Restitution of moneys paid for credentials;
4. Attorney's Fees and Costs;
5. Such other relief as this court deems appropriate.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

| | | |
|---|---|---|
| MARIA BROMLEY, et al., | ) | |
| Plaintiffs | ) | |
| v. | ) | No. 23-cv-1227 |
| SXSW, LLC, | ) | |
| Defendant | ) | Filed: February 4, 2024 |

**CONSOLIDATED MOTION**

**I. Motion to _____**

In the wake of the COVID-19 pandemic, the Texas legislature expressed concern for businesses that had accepted money for goods and services that they could not provide due to the pandemic and pandemic restrictions imposed by the federal government, local governments, and governments of states other than Texas. The legislature did not want Texas businesses to incur substantial losses for failures that were beyond their control, a product of a public-health emergency and government-imposed restrictions, many of which came from outside Texas. Such litigation losses would harm businesses, and thus the economy, of the state of Texas.

The legislature enacted Tex. R. Proc. § e.104, which provides as follows:

> No action shall be commenced or maintained for any cause of action arising out of the failure to provide paid-for goods or services during the period of COVID-19 unless the complaint or initial pleading is accompanied by a Certificate of Merit. Such Certificate of Merit shall contain the written opinion of an expert that the plaintiff's claim does not arise out of or relate to COVID-19 and that the defendant's failure to provide paid-for goods or services was not caused by or related to COVID-19 and restrictions related to COVID-19. Any complaint or initial pleading lacking a Certificate of Merit shall be dismissed with prejudice.

Plaintiffs did not file a certificate of Merit along with the Complaint. Pursuant to § 766.104, therefore, this action must be dismissed with prejudice for failure to state a claim upon which relief can be granted for lack of a Certificate of Merit.

**II. Motion to _____**

If the court does not dismiss this action, these plaintiffs should pursue separate civil actions in this judicial district. Plaintiffs are not properly joined under the Federal Rules of Civil Procedure.

**1) The title of this document should be (naming the motions in order presented):**

A) Defendant's Motion to Strike or, in the Alternative, to Dismiss
B) Defendant's Motion to Dismiss, or, in the Alternative, to Strike
C) Defendant's Motion to Dismiss, or, in the Alternative, to Sever
D) Defendant's Motion to Strike, or, in the Alternative, to Sever

**2) The plaintiffs are properly joined because:**

A) Each plaintiff claims injury from SXSW's refusal to refund tickets for the 2020 festival and each plaintiff asserts the same legal claims for relief.

B) Each plaintiff claims injury from SXSW's refusal to refund tickets for the 2020 festival.

C) Each plaintiff will lose the right to sue SXSW if they do not join in one action.

D) Each plaintiff asserts the same legal claims against one defendant who suffers no prejudice from defending in a single action.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

| | |
|---|---|
| MARIA BROMLEY, et al., | ) |
| Plaintiffs | ) |
| v. | ) No. 23-cv-1227 |
| SXSW, LLC, | ) |
| Defendant | ) Entered: October 18, 2024 |

**ORDER**

Upon consideration of the arguments of the parties, the court orders as follows:

Defendant's Consolidated Motion is DENIED.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

MARIA BROMLEY, et al., )
Plaintiffs )
v. ) No. 23-cv-1227
SXSW, LLC, )
Defendant )
------------------------------------------ )
SXSW, LLC, )
______ ) Filed: October 28, 2024
v. )
FEDERATED INDMENITY )
PARTNERS, )
______ )

**THIRD-PARTY COMPLAINT**

**3) Identify the proper caption for the bottom portion of this pleading:**

A)
SXSW, LLC, )
Plaintiff )
v. )
FEDERATED INDMENITY )
PARTNERS, )
Third-Party Defendant )

B)
SXSW, LLC, )
Third-Party Plaintiff )
v. )
FEDERATED INDMENITY )
PARTNERS, )
Third-Party Defendant )

C)
SXSW, LLC, )
Plaintiff )
v. )
FEDERATED INDMENITY )
PARTNERS, )
Defendant )

D)
SXSW, LLC, )
Third-Party Plaintiff )
v. )
FEDERATED INDMENITY )
PARTNERS, )
Fourth-Party Plaintiff )

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

| | |
|---|---|
| MARIA BROMLEY, et al., | ) |
| Plaintiffs | ) |
| v. | ) No. 23-cv-1227 |
| SXSW, LLC, | ) |
| Defendant | ) |
| ------------------------------------------- | ) |
| SXSW, LLC, | ) |
| ______ | ) Filed: October 28, 2024 |
| v. | ) |
| FEDERATED INDMENITY | ) |
| PARTNERS, | ) |
| ______ | ) |

**THIRD-PARTY COMPLAINT**

* * *

4. SXSW, LLC. ("SXSW") is a Texas limited-liability company with its principal place of business in Austin, TX.

5. Federated Indemnity Partners ("Federated") is an Indiana corporation with its headquarters and sole office in New Jersey; all Federal officers and directors work from that office.

* * *

Service of this pleading was effected on November 7, 2023.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

| | | |
|---|---|---|
| MARIA BROMLEY, et al., | ) | |
| Plaintiffs | ) | |
| v. | ) | No. 23-cv-1227 |
| SXSW, LLC, | ) | |
| Defendant | ) | |
| ------------------------------------------- | ) | |
| SXSW, LLC, | ) | |
| ______ | ) | <u>Filed</u>: December 23, 2024 |
| v. | ) | |
| FEDERATED INDMENITY | ) | |
| PARTNERS, | ) | |
| ______ | ) | |

**<u>FEDERATED'S MOTION TO ____ THE THIRD-PARTY COMPLAINT OR IN THE ALTERNATIVE TO DISMISS ALL CLAIMS IN THE THIRD-PARTY COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION</u>**

Service of this motion was effected the day of filing.

On December 14, 2024 (37 days after serving its pleading), SXSW identifies a defect—it listed the opposing party as Federated Indemnity Partners; the insurer's correct name is Federal Insurance Co. Despite the error in name, SXSW properly served the pleading and summons on Federal Insurance Co.

On January 5, 2025 (after receiving the motion on Page 8), SXSW files following, correcting the caption and ¶ 5.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

| | |
|---|---|
| MARIA BROMLEY, et al., | ) |
| Plaintiffs | ) |
| v. | ) No. 23-cv-1227 |
| SXSW, LLC, | ) |
| Defendant | ) |
| ------------------------------------------ | ) |
| SXSW, LLC, | ) |
| ______ | ) Filed: January, 5, 2025 |
| v. | ) |
| FEDERAL INSURANCE CO., | ) |
| ______ | ) |

**[AMENDMENT TO SXSW PLEADING]**

* * *

4. SXSW, LLC. ("SXSW") is a Texas limited-liability company with its principal place of business in Austin, TX.
5. Federal Insurance Co. ("Federal") is an Indiana corporation with its headquarters and sole office in New Jersey; all Federal officers and directors work from that office.

**4) The pleading is properly filed because:**

(A) SXSW can amend at any time because this pleading requires a responsive pleading.
(B) SXSW can amend at any time because Federal never filed a responsive pleading, only a motion; any time period never began to run.
(C) SXSW can amend at any time until January 13, so the pleading comes more than a week before the deadline.
(D) SXSW can amend at any time until January 6, so the pleading comes one day before the deadline.

**5) The court should:**

(A) Strike the pending motion as moot.
(B) Deny the pending motion as moot.
(C) Dismiss the pending motion as moot.
(D) Consider and decide the pending motion.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

| | | |
|---|---|---|
| MARIA BROMLEY, et al., | ) | |
| Plaintiffs | ) | |
| v. | ) | No. 23-cv-1227 |
| SXSW, LLC, | ) | |
| Defendant | ) | |
| ------------------------------------------- | ) | |
| SXSW, LLC, | ) | |
| ______ | ) | Filed: January 5, 2025 |
| v. | ) | |
| FEDERAL INSURANCE, CO., | ) | |
| ______ | ) | |

**[AMENDMENT TO SXSW PLEADING]**

* * *

4. SXSW, LLC. ("SXSW") is a Texas limited-liability company with its principal place of business in Austin, TX.

5. Federal Insurance Co. ("Federal") is an Indiana corporation with its headquarters and sole office in New Jersey; all Federal officers and directors work from that office.

* * *

8. Plaintiffs filed the instant action against SXSW on March 3, 2023 ("Bromley Complaint; copy attached to this Pleading **Exhibit A**).

9. SXSW contracted with Federal for insurance coverage, with a policy period of August 17, 2019 to August 17, 2020 ("2020 Contract;" copy attached to this Pleading as **Exhibit B**). That policy remained effective at the time of the events—the non-refund of payments for the 2020 South-by-Southwest Festival—giving rise to this action.

10. The contract contained the following provision:

Insuring Clause (C): Entity Liability Coverage

(C) The Insurer shall pay, on behalf of the Insured, Loss on account of a Claim first made against the Insured during the Policy Period.

11. The contract defines "Loss" to include (but not be limited to) the following:

Compensatory damages; judgments, including pre-judgment and post-judgment interest, and defense costs.

12. The instant litigation constitutes a covered "Loss" under the policy. As indicated in the "Prayer for Relief" in the attached Bromley Complaint, plaintiffs seek a judgment, compensatory damages, interest, and attorney's fees and costs over SXSW's refusal to refund the money spent on credentials for the 2020 Festival.

13. SXSW emailed Federal a copy of the Bromley Complaint on March 6, 2023.

14. On May 7, 2023, Federal notified SXSW that it would not indemnify SXSW for this action.

15. The Bromley Complaint includes 100 plaintiffs; each seeks as little as $ 875 and as much as $ $ 2650. At a minimum, SXSW faces liability of $ 87,500 (if 100 plaintiffs seek the lowest amount) and likely much more than that, as several plaintiffs seek more than at least $ 1000 each.

* * *

23. This is not the first time Federal has failed to cover SXSW pursuant to a contract of insurance related to the South-by-Southwest Festival.

24. SXSW and Federal previously entered into a contract for the period of August 17, 2016 to August 17, 2017 ("2017 Contract;" copy attached to this Pleading as **Exhibit C**). The content of the 2017 Contract was identical to the 2020 Contract, including in the Insuring Clause described in ¶ 12 and the definition of loss described in ¶ 13; those allegations are incorporated into the current allegation as if fully set forth herein.

25. South-by-Southwest Festival 2017 took place from March 11 through March 22, 2017, during the coverage period of the 2017 Contract.

26. During the 2017 Festival, attendee Adrian McManus suffered a heart attack while walking through a crowd walking between events. Despite efforts of Festival personnel to revive Mr. McManus, he died.

27. On February 4, 2019, Mr. McManus's Estate sued SXSW for negligence, for failing to provide sufficient and speedy medical care. ("McManus Complaint;" copy attached to this Pleading as **Exhibit D**).

28. On February 8, 2019, SXSW emailed Federal a copy of the complaint.

29. On March 2, 2019, Federal notified SXSW that it would not indemnify SXSW for the McManus Complaint.

30. On November 13, 2019, SXSW settled with the McManus Estate for $ 60,000.

31. Despite an additional request on November 15, 2019, Federal refused and continues to refuse to cover SXSW for the loss in the McManus Complaint arising from the 2017 Festival.

**<u>Count I</u>: Breach of Contract (failure to cover loss in the Bromley Complaint) (under Texas Law)**

**<u>Count II</u>: Breach of Contract (failure to cover loss in the McManus Complaint) (under Texas Law)**

**<u>Prayer for Relief</u>**

Plaintiff prays the court provide relief, including, but not limited to,

1. Declaratory Judgment, declaring that Federal must indemnify SXSW for any losses incurred in the Bromley Complaint;
2. Damages in the amount of $ 60,000 reflecting the amount SXSW paid in the McManus Complaint;
3. Such other and further relief as this court deems necessary and appropriate.

**6. Which is true of the two counts in the pleading:**

(A) Counts I and II are proper under FRCP 14(a).
(B) Count II is proper under FRCP 14(a); Count I is proper under FRCP 18(a).
(C) Counts I and II are proper under FRCP 18(a).
(D) Count I is proper under FRCP 14(a); Count II is proper under FRCP 18(a).

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

| | |
|---|---|
| MARIA BROMLEY, et al., | ) |
| Plaintiffs | ) |
| v. | ) No. 23-cv-1227 |
| SXSW, LLC, | ) |
| Defendant | ) |
| ------------------------------------------- | ) |
| SXSW, LLC, | ) |
| ______ | ) Filed: February 3, 2025 |
| v. | ) |
| FEDERAL INSURANCE, CO., | ) |
| ______ | ) |

**FEDERAL INSURANCE CO. MOTION TO DISMISS COUNT II OF [CURRENT SXSW PLEADING] FOR LACK OF SUBJECT MATTER JURISDICTION**

Service of the Motion effected the day of filing.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

| | |
|---|---|
| MARIA BROMLEY, et al., | ) |
| Plaintiffs | ) |
| v. | ) No. 23-cv-1227 |
| SXSW, LLC, | ) |
| Defendant | ) |
| -------------------------------------------- | ) |
| SXSW, LLC, | ) |
| ______ | ) Entered: May 17, 2025 |
| v. | ) |
| FEDERAL INSURANCE, CO., | ) |
| ______ | ) |

**ORDER**

Upon consideration of the arguments of the parties, the court orders as follows:

Motion to Dismiss Count II is GRANTED. Count II of SXSW's pleading is dismissed without prejudice, for lack of subject matter jurisdiction.

SXSW receives the order on the day the Court enters it.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

MARIA BROMLEY, et al., )
Plaintiffs )
v. ) No. 23-cv-1227
SXSW, LLC, )
Defendant )
------------------------------------------- )
SXSW, LLC, )
______ ) Filed: June 18, 2025
v. )
FEDERAL INSURANCE, CO., )
______ )

**SXSW'S MOTION FOR LEAVE TO AMEND**

By Order dated May 17, 2025, this court dismissed Count II of SXSW's pleading for lack of subject-matter jurisdiction. SXSW now moves for leave to amend that pleading. A copy of the proposed amendment is attached to this motion as **Exhibit A**.

The lone change in the proposed amended pleading from the prior pleading is in ¶ 4. SXSW confesses error in pleading jurisdiction in its prior pleadings, particularly in the allegations in ¶ 4. That error led to the court dismissing Count II. The new version of ¶ 4 addresses and corrects the defect and therefore the basis for dismissing Count II.

Aside from ¶ 4, the attached proposed amended pleading is identical to the prior pleading. All allegations other than ¶ 4 remain unchanged, including in numbering. SXSW asserts the same two clams and seeks the same relief. The attached proposed pleading also includes the prior documents—including the contracts at issue and the prior complaints for which coverage is sought—referenced in the proposed amendment and attached as exhibits to that proposed pleading.

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

MARIA BROMLEY, et al., )
Plaintiffs )
v. ) No. 23-cv-1227
SXSW, LLC, )
Defendant )
------------------------------------------- )
SXSW, LLC, )
______ )
v. )
FEDERAL INSURANCE, CO., )
______ )

**[PLEADING DESIGNATION FOR SXSW PROPOSED AMENDED PLEADING]**

* * *

4. SXSW, LLC. (“SXSW”) is a Texas limited-liability company with eight members. Six members are individual citizens of California, Delaware, Florida, Massachusetts, Michigan, and Virginia. A seventh member is MusicFest Partners, Ltd., a New Jersey partnership with its principal place of business in New Jersey; its general partners are individuals and citizens of California, Connecticut, Delaware, Nevada, New York, Pennsylvania, and Texas. The final member is YankMusic, Inc., a U.K. corporation with its principal place of business in London, its sole office from which its officers operate the company.

5. Federal Insurance Co. (“Federal”) is an Indiana corporation with its headquarters and sole office in New Jersey; all Federal officers and directors work from that office.

* * *

8. Plaintiffs filed the instant action against SXSW on March 3, 2023 (“Bromley Complaint;” copy attached to this Pleading **Exhibit A**).

9. SXSW contracted with Federal for insurance coverage, with a policy period of August 17, 2019 to August 17, 2020 (“2020 Contract;” copy attached to this Pleading as **Exhibit B**). That policy remained effective at the time of the events—the non-refund of payments—giving rise to this action.

10. The contract contained the following provision:

Insuring Clause (C): Entity Liability Coverage

(C) The Insurer shall pay, on behalf of the Insured, Loss on account of a
Claim first made against the Insured during the Policy Period.

11. The contract defines “Loss” to include (but not be limited to) the following:

Compensatory damages; judgments, including pre-judgment and
post-judgment interest, and defense costs.

12. The instant litigation constitutes a covered “Loss” under the policy. As indicated in the “Prayer for Relief” in the Bromley Complaint, plaintiffs seek a judgment, compensatory damages, interest, and attorney’s fees and costs over SXSW’s refusal to refund the money spent on credentials for the 2020 Festival.

13. SXSW emailed Federal a copy of the Bromley Complaint on March 6, 2023.

14. On May 7, 2023, Federal notified SXSW that it would not indemnify SXSW for this action.

15. The Bromley Complaint includes 100 plaintiffs; each seeks as little as $ 875 and as much as $ $ 2650. At a minimum, SXSW faces liability of $ 87,500 (if 100 plaintiffs seek the lowest amount) and likely much more than that, as several plaintiffs seek more than at least $ 1000 each.

* * *

23. This is not the first time Federal has failed to cover SXSW pursuant to a contract of insurance.

24. SXSW and Federal previously entered into a contract for the period of August 17, 2016 to August 17, 2017 (“2017 Contract,” attached as **Exhibit C**). The content of the 2017 Contract was identical to the 2020 Contract, including in the Insuring Clause described in ¶ 12 and the definition of loss described in ¶ 13; those allegations are incorporated into the current allegation as if fully set forth herein.

25. South-by-Southwest Festival 2017 took place from March 11 through March 22, 2017, during the coverage period of the 2017 Contract.

26. During the 2017 Festival, an attended Adrian McManus suffered a heart attack while walking through a crowd walking between events. Despite efforts of Festival personnel to revive Mr. McManus, he died.

27. On February 4, 2019, Mr. McManus’s Estate sued SXSW for negligence, in failing to provide sufficient and speedy medical care. (“McManus Complaint;” a copy is attached as **Exhibit D**).

28. On February 8, 2019, SXSW emailed Federal a copy of the complaint on March 6, 2023.

29. On March 2, 2019, Federal notified SXSW that it would not indemnify SXSW for the McManus Complaint.

30. On November 13, 2019, SXSW settled with the McManus Estate for $ 60,000.

31. Despite an additional request on November 15, 2019, Federal refused and continues to refuse to cover SXSW for the loss in the McManus Complaint.

**<u>Count I</u>: Breach of Contract (failure to cover loss in the Bromley Complaint) (under Texas Law)**

**<u>Count II</u>: Breach of Contract (failure to cover loss in the McManus Complaint) (under Texas Law)**

**<u>Prayer for Relief</u>**

Plaintiff prays the court provide relief, including, but not limited to,

1. Declaratory Judgment, declaring that Federal must indemnify SXSW for any losses incurred in the Bromley Complaint;
2. Damages in the amount of $ 60,000 reflecting the amount paid in the McManus Complaint.
3. Such other and further relief as this court deems necessary and appropriate.

**7. Which of the following arguments should Federal make in opposition to the motion for leave to amend?**

(A) If the proposed pleading fails to correct the lack of jurisdiction, leave to amend should be denied on grounds of futility.

(B) If the proposed pleading fails to correct the lack of jurisdiction, leave to amend should be denied on grounds of undue delay.

(C) If the proposed pleading fails to correct the lack of jurisdiction, leave to amend should be denied on grounds of bad faith.

(D) If the proposed pleading fails to correct the lack of jurisdiction, the proposed amendment should be dismissed for lack of subject matter jurisdiction.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

| | |
|---|---|
| MARIA BROMLEY, et al., | ) |
| Plaintiffs | ) |
| v. | ) No. 23-cv-1227 |
| SXSW, LLC, | ) |
| Defendant | ) |
| ------------------------------------------- | ) |
| SXSW, LLC, | ) |
| ______ | ) <u>Entered</u>: October 3, 2025 |
| v. | ) |
| FEDERAL INSURANCE, CO., | ) |
| ______ | ) |

**<u>ORDER</u>**

Upon consideration of the arguments of the parties, the Motion for Leave to Amend is GRANTED. The pleading attached as an exhibit to SXSW's motion shall be deemed filed as of the date of this Order. This shall be designated as [FRCP 7(a) Designation] and deemed the effective and controlling pleading between these parties.

Federal Insurance Co. shall have 21 days to respond or otherwise plead.

**8) Federal files a responsive pleading. The FRCP 7(a) designation for that pleading is:**

(A) Amended Answer to Second Amended Third-Party Complaint
(B) Answer to Amended Third-Party Complaint
(C) Answer to Second Amended Third-Party Complaint
(D) Amended Answer to Third Amended Third-Party Complaint

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

| | | |
|---|---|---|
| MARIA BROMLEY, et al., | ) | |
| Plaintiffs | ) | |
| v. | ) | No. 23-cv-1227 |
| SXSW, LLC, | ) | |
| Defendant | ) | <u>Entered</u>: January 7, 2026 |

**<u>ORDER OF DISMISSAL</u>**

The parties have notified the court of the following:

Plaintiffs have voluntarily dismissed Count I of the Complaint. FRCP 41(a)(1)(A)(ii).

Plaintiffs and Defendant represent to the court that they have reached a mutually agreed upon settlement of the remaining claims between them. SXSW will reimburse each plaintiff 40 % of the amount spent for credentials for the 2020 South-by-Southwest Festival, plus 2 % interest on that amount.

Wherefore, the Complaint in this action and all plaintiffs' claims within it are DISMISSED WITH PREJUDICE. The parties may return to court for necessary enforcement of the settlement agreement.

Both parties receive the Order on the day the court enters it.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

| | | |
|---|---|---|
| MARIA BROMLEY, et al., | ) | |
| Plaintiffs | ) | |
| v. | ) | No. 23-cv-1227 |
| SXSW, LLC, | ) | |
| Defendant | ) | |
| ------------------------------------------- | ) | |
| SXSW, LLC, | ) | |
| ______ | ) | Filed: February 9, 2026 |
| v. | ) | |
| FEDERAL INSURANCE, CO., | ) | |
| ______ | ) | |

**FEDERAL'S MOTION TO DISMISS COUNT I FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

The court should dismiss Count I of SXSW's pleading for failure to state a claim upon which relief can be granted.

The insurance policy SXSW seeks to enforce in this pleading contains the following provision:

¶ 17(B) Professional Services Exclusion

Insurer shall not be liable for Loss account of any Claim against Insured based upon, arising from, or inconsequence of the rendering of, or failure to render, any Professional Services.

¶ 17(C) Professional Services Defined:

Services which are performed for others for a fee.

Paragraphs 17(B) and 17(C) of the contract preclude coverage—Federal is not required to indemnify SXSW—for losses arising from the original (now-settled) claims in this action. Those claims arose from SXSW's provision of services—the 2020 South-by-Southwest Festival—for a fee paid by attendees such as Plaintiffs. SXSW cannot recover under this contract of insurance and Federal is not liable to cover any such losses.

Count I of its pleading therefore must be dismissed.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

| | |
|---|---|
| MARIA BROMLEY, et al., | ) |
| Plaintiffs | ) |
| v. | ) No. 23-cv-1227 |
| SXSW, LLC, | ) |
| Defendant | ) |
| ------------------------------------------- | ) |
| SXSW, LLC, | ) |
| ______ | ) Filed: March 11, 2026 |
| v. | ) |
| FEDERAL INSURANCE, CO., | ) |
| ______ | ) |

**SXSW'S OPPOSITION TO MOTION TO DISMISS COUNT I FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

The court cannot consider ¶ 17(B) or ¶ 17(C) of the insurance agreement on a motion to dismiss for failure to state a claim.

Even if it can, the Professional Services Exclusion does not apply to (and thus deny coverage for) the type of claim SXSW asserts against Federal in Count I.

**9) Which of the following is true as to the first argument:**

(A) The court can consider ¶¶ 17(B) and 17(C) of the insurance agreement if it converts to a motion for summary judgment.

(B) The court can consider ¶¶ 17(B) and 17(C) of the insurance agreement on a motion to dismiss because the court can take judicial notice of legal documents.

(C) The court can consider ¶¶ 17(B) and 17(C) of the insurance agreement on a motion to dismiss because the agreement qualifies as material pertinent to the motion.

(D) The court can consider ¶¶ 17(B) and 17(C) of the insurance agreement on a motion to dismiss because the agreement was attached to the pleading.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

| | | |
|---|---|---|
| MARIA BROMLEY, et al., | ) | |
| Plaintiffs | ) | |
| v. | ) | No. 23-cv-1227 |
| SXSW, LLC, | ) | |
| Defendant | ) | |
| ------------------------------------------- | ) | |
| SXSW, LLC, | ) | |
| ______ | ) | |
| v. | ) | Entered: March 20, 2026 |
| FEDERAL INSURANCE, CO., | ) | |
| ______ | ) | |

**ORDER**

The parties offer conflicting precedent in briefing the motion:

*Greenwich Ins. Co.* (N.D. Tex. 2014):

A professional services exclusion in an insurance contract is limited to claims specifically arising from the provision of services—failure to provide services or failure to adequately provide services. The provision of any services for any fee must be the direct basis for the claim for which coverage is sought—a party must sue the insured over providing (or failing to provide) adequate services for a fee and the insured must seek coverage for the amounts owed to that party due to the inadequate provision or non-provision of those services. It is not enough that the provision of professional services provides some broader context or explains the actual claim. In particular, the exclusion of the insurance contract does not apply to claims for refunds of fees apart from the provision of services. The insurer must provide coverage and indemnification for such claims.

*Ironshore Indem. Co.* (Tex. Ct. App. 2012):

A professional services exclusion in an insurance agreement applies to all claims "fairly traceable" to the provision of services for a fee. This contemplates a longer, more remote chain of causation between the provision of any services for which insured may earn a fee and the claim on which insurance coverage is sought. An exclusion protects the insurer from having to pay on any claim within that longer chain. Thus, a claim that a theatre company canceled a performance would be subject to the insurance exclusion, as would a claim seeking a refund from the theatre company of the money paid for tickets. The insurer need not pay on either.

**10) Depending on which precedent the court adopts and applies, it should:**

(A) Grant and dismiss without prejudice under *Ironshore*; deny under *Greenwich*.
(B) Grant and dismiss with prejudice under *Ironshore*; deny under *Greenwich*.
(C) Grant and dismiss with prejudice under *Greenwich*; deny under *Ironshore*.
(D) Grant and dismiss with prejudice under either precedent.

**End of Prelim Exam. Congratulations.**

**Remember James Pfander . . .  And thanks for listening.**