

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

CHONA ALLISON, ARTHUR BADEN,  
STEPHEN BEARD, RICHARD BLAKELEY,  
TONY BORSELLINO, LIZ BRODERICK,  
THEODORE CORNELL, MIKE FITZGERALD,  
JEREMIAH FOLKMAN, KEVIN GALLAGHER,  
TIM HANKE, LYNN KOOP, MASON LEE,  
SARAH LIN, DEBBIE LOTT, TERRENCE  
MCCANN, JAMIE MCLEAN, DENISE PEPIN,  
BEN RAMUNDT, BART RITCHEY, DEREK  
SMITH, JEFF ULMER and R-T SPECIALTY OF  
ILLINOIS, LLC, a Delaware Corporation,

Plaintiffs,

v.

CRC INSURANCE SERVICES, INC., an  
Alabama corporation,

Defendants.

10 CH 19 209

Case No.

Judge

DECLARATORY RELIEF REQUESTED

COOK COUNTY CLERK  
JULY 4 PM 1:15  
CHANCERY DIVISION

## COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs Chona Allison, Arthur Baden, Stephen Beard, Richard Blakeley, Tony Borsellino, Liz Broderick, Theodore Cornell, Mike Fitzgerald, Jeremiah Folkman, Kevin Gallagher, Tim Hanke, Lynn Koop, Mason Lee, Sarah Lin, Debbie Lott, Terrence McCann, Jamie McLean, Denise Pepin, Ben Ramundt, Bart Ritchey, Derek Smith, Jeff Ulmer (the “Individual Plaintiffs”) and R-T Specialty of Illinois, LLC (“Plaintiff RTS”), for their Complaint for Declaratory Relief against defendant CRC Insurance Services, Inc. (“Defendant” or “CRC”), allege as follows:

### NATURE OF THE ACTION

1. The Individual Plaintiffs bring this action seeking a declaration that certain restrictive covenants contained in the Individual Plaintiffs’ respective employment agreements with Defendant CRC constitute a significant overreaching on the part of CRC, and accordingly are unlawful and contrary to public policy. The restrictive covenants, if enforced, would effectively bar each plaintiff from working in his or her chosen field anywhere in the country for the next two years unless he or she continues to work for CRC.

2. The Individual Plaintiffs are all members of CRC’s Chicago office, formerly known as Cooney, Rikard & Curtin of Illinois, Inc. (“CRC Illinois”). The Individual Plaintiffs, however, no longer wish to work for CRC. They wish to leave CRC and work elsewhere in their chosen field of wholesale insurance brokerage because, as set forth below, CRC and its parent, BB&T Corporation, have, for the past several years, embarked on a business plan that creates direct conflicts of interest between CRC’s retail insurance broker clients and BB&T’s own retail insurance brokers. Those conflicts of interest are real, and they already have led to significant problems with CRC clients, including those that the Individual Plaintiffs have brought to CRC and serviced.

3. When the Individual Plaintiffs first joined CRC as employees, and throughout their employment with CRC, they were assured that CRC would remain an independent wholesale-insurance brokerage, and would not affiliate with a large retail-insurance brokerage, or with any other entity with a significant affiliation with a large retail insurance brokerage business. Indeed, when BB&T acquired CRC Illinois—along with the other CRC offices—in 2002, BB&T specifically recognized that the independence of the CRC offices was “essential to their growth in the wholesale insurance brokerage and underwriting markets” and that the continued independence of the CRC offices “is vital to the continued economic success of the [offices] following the acquisition.” Accordingly, BB&T promised that, after BB&T’s acquisition, CRC would remain independent. CRC also repeatedly assured Individual Plaintiffs during their employment with CRC, including during training, that CRC would remain an independent wholesale-insurance brokerage. CRC and BB&T have failed to honor those assurances.

4. During the past several years, CRC’s parent, BB&T, has pursued a business strategy that is destroying CRC’s independence. Ultimately, the business plan of BB&T and CRC will continue to damage the Individual Plaintiffs’ relationships with their retail clients, and harm the Individual Plaintiffs’ ability to succeed in their chosen field. The Individual Plaintiffs therefore wish to leave CRC and join a different wholesale-insurance brokerage that is independent of affiliation with retail-insurance brokerages. But CRC has threatened Individual Plaintiffs that, if they leave CRC, CRC will attempt to prevent them from working in their chosen field for the next two years.

5. Plaintiff R-T Specialty, LLC (“RTS”) is a newly-formed wholesale insurance brokerage business. RTS wishes to hire the Individual Plaintiffs to work in its Chicago office

and has made offers to the Individual Plaintiffs to join RTS's Chicago office. CRC seeks to prevent the Individual Plaintiffs from accepting those offers.

6. The Individual Plaintiffs, therefore, bring this action for a declaration that the restrictive covenants in their employment agreements with CRC are void and unenforceable to the extent they purport to bar them from continuing to work in the wholesale-insurance brokerage industry for another company, such as RTS. RTS seeks a declaration that the Individual Plaintiffs are able to join its Chicago office.

#### **PARTIES, JURISDICTION, AND VENUE**

7. Plaintiff Chona Allison is an Illinois resident, and was employed in CRC's Chicago office.

8. Plaintiff Arthur Baden is an Illinois resident, and was employed in CRC's Chicago office.

9. Plaintiff Stephen Beard is an Illinois resident, and was employed in CRC's Chicago office.

10. Plaintiff Richard Blakeley is an Illinois resident, and was employed in CRC's Chicago office.

11. Plaintiff Tony Borsellino is an Illinois resident, and was employed in CRC's Chicago office.

12. Plaintiff Liz Broderick is an Illinois resident, and was employed in CRC's Chicago office.

13. Plaintiff Theodore Cornell is an Illinois resident, and was employed in CRC's Chicago office.

14. Plaintiff Mike Fitzgerald is an Illinois resident, and was employed in CRC's Chicago office.

15. Plaintiff Jeremiah Folkman is an Illinois resident, and was employed in CRC's Chicago office.

16. Plaintiff Kevin Gallagher is an Illinois resident, and was employed in CRC's Chicago office.

17. Plaintiff Tim Hanke is an Illinois resident, and was employed in CRC's Chicago office.

18. Plaintiff Lynn Koop is an Illinois resident, and was employed in CRC's Chicago office.

19. Plaintiff Mason Lee is an Illinois resident, and was employed in CRC's Chicago office.

20. Plaintiff Sarah Lin is an Illinois resident, and was employed in CRC's Chicago office.

21. Plaintiff Debbie Lott is an Illinois resident, and was employed in CRC's Chicago office.

22. Plaintiff Terrence McCann is an Illinois resident, and was employed in CRC's Chicago office.

23. Plaintiff Jamie McLean is an Illinois resident, and was employed in CRC's Chicago office.

24. Plaintiff Denise Pepin is an Illinois resident, and was employed in CRC's Chicago office.

25. Plaintiff Ben Ramundt is an Illinois resident, and was employed in CRC's Chicago office.

26. Plaintiff Bart Ritchey is an Illinois resident, and was employed in CRC's Chicago

office.

27. Plaintiff Derek Smith is an Illinois resident, and was employed in CRC's Chicago office.

28. Plaintiff Jeff Ulmer is an Illinois resident, and was employed in CRC's Chicago office.

29. Plaintiff RTS is a Delaware limited-liability company with its principal place of business in Chicago, Cook County, Illinois.

30. Defendant CRC is an Alabama corporation registered and doing business in Illinois, with its principal place of business in Birmingham, Alabama. Its registered agent for service is located in Cook County, Illinois.

31. Personal jurisdiction over CRC exists because CRC is registered in Illinois and transacts substantial business in this state. Additionally, CRC entered contractual agreements with the Individual Plaintiffs, with the performance of those agreement to occur in Illinois.

32. Venue is proper in this county pursuant to Illinois Code of Civil Procedure §§ 2-101 and 2-102(a).

33. Venue also is proper in this County specifically as to Individual Plaintiffs Arthur Baden and Chona Eaton because their employment agreements with CRC provide that disputes relating to the validity, construction, interpretation and enforcement of their agreements shall be instituted and determined exclusively in the courts of Cook County and the State of Illinois.

34. Venue also is proper in this County notwithstanding provisions in the contracts of other Individual Plaintiffs that purport to designate Alabama as the forum to institute and determine disputes relating to the validity, construction, interpretation and enforcement of their agreements because, among other things, (i) the Individual Plaintiffs are all Illinois residents

with no substantial connection with the State of Alabama, and (ii) instituting separate actions in Alabama as to those Individual Plaintiffs would result in two lawsuits involving similar claims being tried in two separate courts and the appropriate venue to resolve the claims of these Illinois residents is Illinois.

## **FACTUAL BACKGROUND**

### **Nature Of The Wholesale Insurance Brokerage Industry.**

35. Wholesale insurance brokers generally act as an intermediary between a retail-insurance broker and insurers. Wholesale brokers provide retail brokers access to insurance markets that the retail brokers typically would not be able to access. Often, wholesale brokers are necessary to place insurance for certain types of specialized risks, or to find insurance where the nature of the insured risk is such that retail markets cannot place the insurance.

36. A wholesale-insurance broker's client is the retail-insurance broker. Retail-insurance brokers prefer their wholesale brokers to be independent of both large retail-insurance brokerages and insurance companies. Among other things, independence gives a retail broker comfort that its wholesale broker does not have conflicts of interest between the retail client and its affiliated large retail brokerage, and otherwise provides peace of mind by ensuring that the wholesale broker has no incentive to favor a particular insurer or an affiliated retail broker.

### **CRC Illinois And The Acquisition Of CRC Illinois By BB&T.**

37. The Chicago office of Cooney, Rikard & Curtin (now known as CRC Insurance Services, Inc.) was formed in 1999. That entity, known as Cooney, Rikard & Curtin of Illinois, Inc., was a joint venture between Cooney, Rikard & Curtin of Illinois, Inc. and Cooney, Rikard & Curtin, Inc.

38. Shortly after the formation of CRC Illinois, and as a result of the need for a cash infusion following the departure of one of its founding members, CRC sought investors for its

business. Ultimately, CRC was acquired by North Carolina's BB&T Corporation, a large bank which, at the time had only a local, regionalized retail brokerage operation selling insurance products to existing bank customers.

39. CRC Illinois's joint venture agreement with CRC gave CRC Illinois's then-president, Tim Turner, the power to veto the deal if he wished. Before the acquisition, Turner and others at CRC Illinois expressed concern about becoming part of the insurance brokerage operations of a bank, because the bank would have the ability to grow substantial retail brokerage operations or otherwise to jeopardize CRC's independence. In response to these concerns, senior BB&T officials assured Turner that BB&T would preserve CRC's independence and would not seek to acquire any "Top 100" retail insurance brokerages. In reliance on these assurances, Turner, in turn, provides similar assurances to other members of CRC Illinois, including many of the Individual Plaintiffs, that BB&T would not threaten CRC's independence by acquiring any "Top 100" retail insurance brokerages.

40. Indeed, in the Agreement and Plan of Reorganization by which BB&T acquired the CRC entities, including CRC Illinois, BB&T specifically acknowledged the importance of CRC's independence to its success, and it promised to maintain that independence by keeping CRC free from significant involvement in the retail brokerage business:

The parties acknowledge that the Acquired Companies since their inception have operated as "independent" wholesale insurance brokers and underwriters not owned by or affiliated with either insurance companies or large retail insurance agencies. This independence has been essential to their growth in the wholesale insurance brokerage and underwriting markets where the Acquired Companies have earned (i) the trust of insurance companies whose products and coverages they broker and (ii) the trust and respect of their retail insurance customers. . . . In order to insure the continued market independence of the Acquired Companies following the Acquisition, the Corporation covenants, represents and warrants that

(i) as one of its on-going post-acquisition management goals, it will reasonably undertake to preserve and protect such market independence of action of the Acquired Companies;

.....

(Acquisition Of CRC, Inc. And Its Affiliates By BB&T Corporation (the "Acquisition"), Ex. 1 hereto, at ¶ 2.7(b).)

**BB&T's And CRC's Breach Of Their Promises Of Independence.**

41. In approximately 2005, BB&T acquired McGriff Siebel, a Top 25 retail broker, and the first of what would become several Top 100 retail insurance brokerages acquired by BB&T. Subsequent acquisitions of Top 100 retail brokers by BB&T included retail broker Rolf Davis in 2007, Union Bank's retail brokerage operations in 2008, and Tripp Oswald in 2009.

42. By mid-2009, it became clear that BB&T was pursuing a strategy to increase substantially its presence in the retail insurance brokerage business, contrary to its prior assurances, and contrary to the best interests of CRC's wholesale business. It is now clear that BB&T intends to have a national retail brokerage presence, with CRC as its captive wholesale operation -- the very structure that BB&T promised it would not create when it first acquired CRC, and that CRC promised its employees, including Individual Plaintiffs, that it would not allow itself to become.

43. BB&T also began to implement other changes that diminished CRC's ability to operate independently. Despite its recognition of the value of CRC's independence, and notwithstanding the assurances it made at the time of its acquisition of CRC, BB&T has now imposed upon CRC a "bank culture" that is fundamentally at odds with the operation of a wholesale insurance brokerage. For example, CRC has sought to integrate CRC's human resources, information technology and accounting functions in a way that would provide BB&T's national retail brokerage operations with access to CRC's retail broker client

information. BB&T's national marketing manager for retail brokerage operations also has begun attending CRC's sales meetings.

44. BB&T's actions in compromising CRC's independence from major retail brokerage operations has created conflicts of interest, and have placed CRC brokers and staff, including the Individual Plaintiffs, at risk of losing current clients and future prospects.

**Individual Plaintiffs' Desire To Leave CRC And CRC's Threats.**

45. Because BB&T has not honored its promise to allow CRC to remain independent, because BB&T is imposing a bank culture on CRC that compromises its ability to retain existing and attract new customers, because working at CRC does not allow Individual Plaintiffs to maintain the independence that clients demand, and for other reasons, Individual Employees no longer wish to work at CRC.

46. Each of the Individual Plaintiffs therefore has given CRC notice of his or her resignation. In response, CRC has made clear to Individual Plaintiffs that, if they leave CRC, CRC will invoke the restrictive covenants in their employment agreements to attempt to prevent the Individual Plaintiffs from working elsewhere in the wholesale insurance business.

**The Plaintiffs' Employment Agreements With CRC**

47. CRC required that each of its brokers, including the Individual Plaintiffs, sign Employment Agreements as a condition of their employment with CRC. Those employment agreements contain extremely broad restrictive covenants that constitute a significant overreaching on the part of CRC and that, if enforced as CRC has threatened, would bar Individual Plaintiffs from working in their chosen field of wholesale insurance brokerage anywhere in the country for the next two years.

48. Although the employment agreements of Individual Plaintiffs vary somewhat, each of the agreements contains a variation of the following provisions:

Employee further agrees that for and during a period of two (2) years from the date of Employee's termination of employment by, or association with, CRC, Employee will not, directly or indirectly, become employed by or associated with, in any capacity or function which is substantially similar in terms of functions and duties to the functions and duties undertaken by Employee during Employee's employment by or association with CRC, any other person, firm or corporation which is, or becomes in competition with CRC or CRC Alabama in the State of Illinois.

\* \* \*

Employee agrees that during the duration of Employee's employment by or association with CRC and for a period of two (2) years after the termination of the Employee's employment by, or association with, CRC, the Employee will not (other than on behalf of CRC in the course of employment hereunder) call upon or communicate with or endeavor by any means whatsoever, either directly or indirectly, to solicit sales from and will not sell . . . , any services or products which are provided by or dealt in by CRC to:

- (i) Any of the then present customers, including but not limited to insurance companies, insureds and retail insurance agencies, or CRC or CRC Alabama and with respect to which Employee personally performed services or employment duties; and
- (ii) Any prospective customers, including but not limited to insurance companies, insureds and retail insurance agencies of CRC or CRC Alabama whom the Employee solicited during the period of the Employee's employment by, or association with, CRC.

(See, e.g., Plaintiff XX's Employment Agreement, attached hereto as Ex. 1, at ¶ 8(a), (c).)

49. The nature of the wholesale insurance industry is such that all major wholesale insurance brokerage operations do business in all fifty states, including Illinois. Further, there is a relatively limited number of top retail insurance brokers that serve as the base of clients for the top wholesale insurance brokerages, and retail insurance brokerage clients do business with multiple wholesale brokers at the same time. As a result, the restrictive covenants contained in the Individual Plaintiffs' employment contracts, if enforced as CRC seeks to enforce them, would bar Individual Plaintiffs from working in their chosen field of wholesale insurance brokerage. They would also purport to prevent retail insurance brokerage clients from using the

