

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHER DISTRICT OF TEXAS
DALLAS DIVISION**

**SAFETY NATIONAL CASUALTY
CORPORATION**

Plaintiff,

vs.

MICHAELS STORES, INC.,

Defendant.

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CIV. ACTION NO. _____

**PLAINTIFF SAFETY NATIONAL CASUALTY CORPORATION'S
ORIGINAL COMPLAINT AND REQUEST FOR DECLARATORY JUDGMENT**

PLAINTIFF Safety National Casualty Corporation ("Safety National") files this Original Complaint and Request for Declaratory Judgment and would show the Court as follows:

I. NATURE OF THE ACTION

1. This is an action seeking declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, for the purpose of resolving a dispute between Safety National and Defendant Michaels Stores, Inc. ("Michaels") concerning the rights and obligations, if any, of Safety National to provide a defense and coverage to Michaels under an insurance policy with respect to several underlying class action lawsuits filed against Michaels. Safety National seeks a declaration from this Court resolving the parties' rights and obligations, if any, under the insurance policy issued by Safety National to Michaels.

II. PARTIES

2. Plaintiff Safety National Casualty Corporation is a company that is organized under the laws of the State of Missouri with its principal place of business located in the state of Missouri.

3. Defendant Michaels Stores, Inc. is a Delaware corporation that has its principal place of business in the State of Texas. Michaels does business in Texas **and may be served at its registered agent, CT Corp., 350 N. St. Paul Street, Dallas, Texas, 75201.**

III. JURISDICTION AND VENUE

4. This is an action for declaratory judgment under 28 U.S.C. §§ 2201 and 2202.
5. This Court has diversity jurisdiction under 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000 and the parties are diverse.
6. Venue is proper in this district under 28 U.S.C. § 1391(b)(1) and (2) because this a judicial district in which any defendant resides and a substantial part of the events or omissions giving rise to this coverage dispute took place in this district.

IV. FACTS

Safety National Policy

7. Safety National issued to Michaels a commercial general liability insurance policy, Policy No. GL 40441404 (the “Policy”) with a policy period from June 1, 2013 to June 1, 2014. A true and correct copy of the Policy is attached hereto as Exhibit “A.”
8. The Policy provides for payment of sums Michaels becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which the insurance under the Policy applies. The Policy provides Safety National has the right and duty to defend Michaels against any suit seeking such damages; however, there is no duty to defend Michaels against any suit seeking “bodily injury” or “property damage to which the insurance under the Policy does not apply. The Policy contains various exclusions, including but not limited to exclusions for expected or intended Injury and damage to property in Michael’s possession, custody or control. The Policy also provides coverage for damages the insured is legally required to pay as damages because of “personal and advertising injury.” This portion of the Policy likewise provides Safety National has the right and duty to defend Michaels against any suit seeking such damages, but no duty to defend Michaels for damages not covered by the Policy. This part of the Policy contains

exclusions for damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

9. The Policy includes a Deductible Liability Coverage Endorsement (the "Deductible Endorsement"), which provides, in pertinent part, Safety National's obligation under the Policy to pay damages on behalf Michaels applies only to the amount of damages in excess of the deductible amounts stated in the Schedule as applicable to such coverage.

Underlying Lawsuits

10. At least four class action lawsuits have been filed against Michaels alleging Michaels failed to secure and safeguard its customers' financial data, including credit and debit card information. These class actions were consolidated into Case No. 14-cv-1827 in the United States District Court for the Eastern District of Illinois, Eastern Division (the "Consolidated Class Action"). A true and correct copy of the Consolidated Class Action Complaint is attached hereto as Exhibit "B" and is incorporated herein.

11. In the Consolidated Class Action Complaint, the class action plaintiffs assert various claims for breach of implied contract, violation of the Illinois Consumer Fraud and Deceptive Business Practices Act and violation of New York General Business Law. These claims arise out of an alleged security data breach in which certain financial information, including credit and debit card information of the class action plaintiffs/Michaels' customers, was taken from Michaels' payment card information system and such information was compromised and/or stolen (the "Security Breach"). The class action plaintiffs assert the Security Breach lasted from as early as May 8, 2013 to at least January 27, 2014. The class action plaintiffs also assert Michaels was the subject of a similar security breach in 2011.

12. The damages alleged by the class plaintiffs include denial of privacy protections they paid for and were entitled to receive resulting in overpayment for products purchased from

Michaels, unauthorized charges and related bank fees they incurred, costs associated with identity theft, and opportunity costs and value of time plaintiffs were forced to expend to monitor their financial and bank accounts as a result of the Security Breach.

Demand for Defense and Coverage & Reservation of Rights

13. Michaels has requested Safety National provide Michaels with a defense in the Consolidated Class Action and seeks coverage from Safety National under the Policy for the claims asserted in the Consolidated Class Action. Safety National issued a reservation of rights informing Michaels of the various coverage issues and Safety National would not be providing Michaels a defense in the Consolidated Class Action. Safety National informed Michaels because the claims in the class action lawsuits pertaining to the Security Breach do not alleged “bodily injury” or “property damage” or “personal or advertising injury,” there is no coverage under the Policy for the claims asserted in the class action lawsuits, based upon information provided and available to Safety National.

14. Michaels filed a Motion to Dismiss and a Motion to Transfer the Consolidated Class Action to the U.S. District Court for the Northern District of Texas, Dallas Division. The United States District Court for the Eastern District of Illinois, Eastern Division has taken the Motion to Dismiss under advisement and the Motion to Transfer is pending.

V. JUSTICIABLE CONTROVERSY

15. An actual, present, bona fide and justiciable controversy has arisen between Safety National and Michaels with respect Safety National’s duty to defend and duty to indemnify Michaels for the claims asserted in the Consolidated Class Action lawsuit. A judicial declaration is necessary to establish the parties’ rights and duties, if any, under the Policy with respect to the Consolidated Class Action lawsuit.

VI. COUNT ONE – DECLARATORY JUDGMENT

16. Plaintiff Safety National incorporates all allegations set forth in paragraphs 1 through 15 and same are re-alleged and incorporated as if fully set forth herein

17. The Consolidated Class Action Complaint in the underlying consolidated class action does not assert claims or seek damages covered by the Safety National Policy. As the rights, status, obligations and other legal of Plaintiff Safety National and Defendant Michaels are uncertain under 28 U.S.C. §§ 2201 and 2202, Safety National requests that this Court enter a declaratory judgment resolving the uncertainty and controversy which have given rise to this Complaint.

PRAYER AND REQUEST FOR RELIEF

Safety National respectfully requests and prays that this Court adjudicates and declares the rights, obligations and duties of the parties to and under the Policy, and that the Court enter a declaratory judgment:

- (1) That Safety National has no duty to defend Michaels in the Consolidated Class Action or any other lawsuit containing the same or similar allegations as those asserted in the Consolidated Class Action;
- (2) That Safety National has no duty to indemnify Michaels for the Consolidated Class Action or any other lawsuit containing the same or similar allegations as those asserted in the Consolidated Class Action; and
- (3) Granting Safety National such other and further relief Safety National may be entitled and/or the Court deems just and proper.

Respectfully submitted,

By: /s/ Paul Bezney

Paul A. Bezney – attorney in charge

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