STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

FCA US LLC f/k/a CHRYSLER GROUP, LLC,

Plaintiff,

Case No. 16-155786-CB

v.

Hon. Martha D. Anderson

RIGHTTHING, LLC, ADP RPO, LLC, APC WORKFORCE SOLUTIONS, LLC d/b/a ZEROCHAOS, COMPUTER AND ENGINEERING SERVICES, INC., KYYBA, INC., AEROTEK, INC., ~~ALLMERICA FINANCIAL BENEFIT INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY~~,

Defendants.
_____/

OPINION AND ORDER RE:
PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION AND
DEFENDANT APC WORKFORCE SOLUTIONS, LLC d/b/a ZEROCHAOS'S
COUNTER-MOTION FOR SUMMARY DISPOSITION
AS TO COUNT III OF PLAINTIFF'S SECOND AMENDED COMPLAINT

This matter is before the Court on Plaintiff and Defendant APC Workforce Solutions, LLC d/b/a ZeroChaos's Motions for Summary Disposition under MCR 2.116(C)(10) as to Count III of the Second Amended Complaint. The Court, having reviewed the parties' submissions and pleadings, dispenses with oral argument under MCR 2.119(E)(3).

I.

On May 16, 2011, Plaintiff FCA US, LLC f/k/a Chrysler Group, LLC ("Chrysler") and Defendant RightThing, LLC ("RightThing") entered into a Master Services Agreement whereby RightThing agreed to "provide recruitment process outsourcing services to Chrysler" with regard to salaried personnel, hourly personnel, and supplemental contract workers.[1] To fulfill its obligations to Chrysler under the Master Services Agreement regarding supplemental contract workers, RightThing contracted with Defendant APC Workforce Solutions, LLC d/b/a ZeroChaos ("ZeroChaos"). The February 22, 2012 Management Services Agreement between RightThing and ZeroChaos required ZeroChaos

[1] Def's Motion, Exh A, Master Services Agreement

to "administer and manage the process by which third-party vendors (the "Staffing Companies") selected by [ZeroChaos] supply their employees as workers to work at Customer on a temporary basis. . . ."[2]

In March and April of 2012, ZeroChaos entered into "Staffing Company Agreements" with three Staffing Companies, Defendant Computer Engineering Services ("CES"); Defendant KYYBA, Inc. ("KYYBA"), and Defendant Aerotek, Inc. ("Aerotek").[3] Under the Staffing Company Agreements, the Staffing Companies agreed to "recruit, interview, select, hire and assign employees ("Staffing Company Worker"), who, in Staffing Company's judgment, are best qualified to perform the Work requested by ZeroChaos."[4] Thereafter, Chrysler was named as a defendant in four lawsuits arising out of motor vehicle accidents involving drivers alleged to be employees of the Staffing Companies.

In two Washtenaw County lawsuits, the plaintiffs, Laura Holliday and Gregory Green, alleged injuries arising out of a July 19, 2012 automobile accident involving an individual named Bradley Erdman ("Erdman"). Allegedly, at the time of the accident, Erdman (a CES employee) was driving a Chrysler-owned vehicle.[5] The Holliday and Green lawsuits settled with Chrysler contributing $456,250 and ZeroChaos's insurer (National Union Fire Insurance Company of Pittsburgh ("National Union")) contributing $456,250.[6]

In a Texas lawsuit, the plaintiff, Dennis Olson, alleged he suffered serious injuries as a result of a June 2014 motor vehicle accident involving an individual named Adam Martin ("Martin"). Allegedly, at the time of the accident, Martin (a KYYBA employee) was driving a Chrysler-owned vehicle and "performing work for [Chrysler] such that it is liable for Plaintiff's damages under the doctrine of respondeat superior."[7] The Olson lawsuit settled with Chrysler paying $2,500,000.

In September 2016, the Estate of Ahmad Anique Ashraf filed a complaint in the Connecticut Superior Court, Judicial District of New London, alleging Ashraf suffered fatal injuries resulting from a December 2015 motor vehicle accident involving James Sposito

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[2]Pl's Motion, Exh 2, Management Services Agreement, p 1.
[3] *Id.,* Exhs 3-5. Def's Motion, Exh 2, Attachments 7, 9, and 11.
[4] *Id.*, p 1.
[5] Second Amended Complaint, at ¶¶ 11-12, 59; Second Amended Complaint, Exhibits A and B, Holliday and Green Complaints.
[6] Def's Motion, Exh D, Chrysler's Ans to Interrogatory No. 4 and Exh E, Coverage and Release Agreement.
[7] Second Amended Complaint, Exhibit C, Olson Petition.

("Sposito").[8] Allegedly, Defendant Aerotek, Inc. ("Aerotek") employed Sposito to perform services for Chrysler.[9] On March 22, 2017, the Ashraf Estate withdrew its Complaint.[10]

Chrysler filed the instant action seeking to recover the amounts it paid to defend and settle the lawsuits. The instant motions relate solely to Chrysler's claim under Count III of the Second Amended Complaint against ZeroChaos.

II.

A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Universal Underwriters Group v Allstate Ins Co,* 246 Mich App 713, 720; 635 NW2d 52 (2001). The court, in reviewing a motion under MCR 2.116(C)(10), "considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion." *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citation omitted). The motion may be granted "if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Id.*

III.

In Count III of the Second Amended Complaint, Chrysler alleges that it is a third-party beneficiary of the Management Services Agreement (the "Management Agreement") between Defendant RightThing and ZeroChaos. It further alleges that, under Section 9.1 of the Management Agreement, ZeroChaos is required to maintain adequate insurance, including general liability and automobile liability coverage for the benefit of Chrysler.[11] Additionally, Chrysler alleges that Section 9.1 compels ZeroChaos to require CES, KYYBA and Aerotek to maintain adequate insurance, including general liability insurance and automobile liability coverage.[12] Further, Chrysler alleges that Section 9.2 of the Management Agreement requires ZeroChaos to name Chrysler as an additional insured on the required commercial liability, automobile liability and umbrella liability policies and to require that CES, KYYBA and Aerotek name Chrysler as an additional insured on such policies.[13]

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[8] *Id.,* Exh D, Ashraf Complaint.
[9] Second Amended Complaint, ¶ 98.
[10] *Id.*, ¶¶ 14-15.
[11] Second Amended Complaint, ¶ 39.
[12] *Id.* at ¶ 40.
[13] *Id.* at ¶¶ 41-42.

Chrysler alleges ZeroChaos breached the Management Agreement "by failing to procure adequate insurance and have Chrysler named as an additional insured on the commercial general liability, automobile liability and umbrella coverage ZeroChaos was required to maintain."[14] Additionally, it is alleged that:

> ZeroChaos breached [the Management Agreement] by failing to require CES, KYYBA, and Aerotek to maintain adequate insurance of the types and in amounts no less than the minimum coverage . . . and have them name Chrysler as an additional insured sufficient to cover the underlying claims asserted by Holliday, Green, Olson and Ashraf. [15]

Lastly, Chrysler alleges that "as a proximate result of the breach of the [Management Agreement] by ZeroChaos in failing to procure insurance for the benefit of Chrysler, Chrysler was required to defend itself and incur attorney fees, expenses and costs (including settlements) in defending the underlying claims and in filing this suit."[16]

The parties agree that Florida law controls Count III of the Second Amended Complaint for Breach of Contract.[17] Under Florida law, "the elements of a breach of contract action are" (1) a valid contract; (2) a material breach; and (3) damages." *JJ Gumberg v Janis Servs, Inc,* 847 So2d 1048, 1049 (Fla App, 2003). The intent of the parties to the contract governs the construction of the contract. *Amer Home Assurance Co v Larkin Gen Hosp, Ltd*, 593 So2d 195, 197 (Fla, 1992). The best evidence of the parties' intent is the plain language of the contract. *Whitley v Royal Trails Prop Owners' Ass'n*, 910 So2d 381, 383 (Fla App, 2005).

A. Breach of Contract re: Sections 9.1 and 9.2 of the Management Agreement

Section 9.1 of the Management Agreement states:

> 9.1 *Required Insurance Coverage.* During the term of this Agreement, Supplier shall maintain adequate insurance of the types and in amounts no less than the minimum coverage listed in Section 9.4. Supplier shall require the Staffing Companies to maintain adequate insurance of the types and in the amounts no less than the minimum coverage listed in Schedule 2. Supplier shall provide Customer, upon Customer's reasonable request, certificates evidencing such coverage.[18]

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[14] *Id.* at ¶ 45.
[15] *Id.* at ¶ 46.
[16] *Id.* at ¶ 47.
[17] *See* Pl's Motion, Exh 2, Management Services Agreement, § 13.9.
[18] Section 9.4 states, in pertinent part:

Supplier's insurance shall consist of:

b) General Liability: (including contractual liability, products and completed operations, independent contractors and personal and advertising injury assistance) providing coverage for bodily injury and property damage with a combined single limit of not less than eleven million dollars ($11,000,000) per occurrence and an annual aggregate of at least eleven million dollars ($11,000,000);

c) Automobile Liability Insurance: including contractual liability coverage for all owned, non-owned, leased, and hired vehicles providing coverage for bodily injury and property damage liability with a combined single limit of not less than ten million dollars ($10,000,000) per accident;

* * *

Supplier's insurance policies as required under Sections b) and c) of this Section 9.4 must name Chrysler and all of its subsidiaries, affiliates, officers, directors, agents, servants and employees as additional insureds.

Such insurance afforded under Section 9.4 of this Agreement must be: (a) written insurance companies that maintain a Best Rating of A-:VII or greater and *(*b) primary insurance and any other similar insurance existing for Customer's or Chrysler's benefit must be non-contributing and excess of such primary insurance. Supplier must take such actions with regard to its policy or policies of insurance as are necessary to cause the policy or policies to comply with the requirements of this agreement . . . . Pl's Motion, Exh 2, Management Services Agreement, pp 12-13.

"Schedule 2-Insurance Requirements" states, in pertinent part:

Staffing Companies shall be required to carry the same insurance and provide the same obligations as listed herein, with the exceptions provided for below:

b) General Liability: (including contractual liability, products and completed operations, independent contractors and personal and advertising injury assistance) providing coverage for bodily injury and property damage with a combined single limit of not less than five million dollars ($5,000,000) per occurrence and an annual aggregate of at least five million dollars ($5,000,000);

c) Automobile Liability Insurance: including contractual liability coverage for all owned, non-owned, leased, and hired vehicles providing coverage for bodily injury and property damage liability with a combined single limit of not less than five million dollars ($5,000,000) per accident;

* * *

Each respective Staffing Company's insurance policies as required under Sections b) and c) of this Schedule 2 must name Chrysler and all of its subsidiaries, affiliates, officers, directors, agents, servants and employees as additional insured's.

Such insurance afforded under Schedule 2 of this Agreement must be: (a) written insurance companies that maintain a Best Rating of A-:VII or greater and (b) primary insurance and any other similar insurance existing for Chrysler's benefit must be non-contributing and excess of such primary insurance. Supplier must take such actions with regard to its policy or policies of insurance as are necessary to cause the policy or policies to comply with the requirements of this agreement . . . . Pl's Motion, Exh 2, Management Services Agreement, Schedule 2.

Section 9.2 of the Management Agreement states:

> 9.2 *Additional Named Insured and Alternate Employer Status.* Supplier shall name Customer and End Client as an additional insured on the required commercial general liability, automobile liability and umbrella liability coverage. Supplier shall require each Staffing Company in the Program to name Customer and End Client as additional insured on the required commercial general liability, automobile liability and umbrella liability coverage, and to include an Alternate Employer Endorsement naming End Client as an Alternate Employer on their worker's compensation policies. All insurance shall be primary coverage afforded the Additional Insured and shall contain a cross-liability or severability of interest clause. Supplier hereby waives and shall cause each Staffing Company and their insurers to waive all rights of subrogation against Customer and End Client, its officers, directors and employees in the event of any covered loss under the policies described above or under any policy maintained by Supplier or a Staffing Company covering Supplier or a Staffing Company's equipment used for the Work.[19]

Chrysler argues that ZeroChaos breached Sections 9.1 and 9.2 by failing to maintain adequate insurance to protect Chrysler from losses arising from the underlying claims. Chrysler also argues that "the failure of the Staffing Companies to defend and provide Chrysler with complete insurance coverage is proof that ZeroChaos breached Section 9.2 of [the Management Agreement]." ZeroChaos responds that it maintained a general liability insurance policy, an automobile insurance policy and an umbrella policy satisfying the minimum requirements of Section 9.4 of the Management Agreement and named Chrysler as an additional insured. It also argues that it required each Staffing Company to "provide and keep in full force" the required insurance. ZeroChaos has presented evidence of liability insurance maintained by ZeroChaos from December 3, 2011 to December 3, 2015.[20] ZeroChaos has also presented its Staffing Company Agreements with CES, KYBBA and Aerotek as well as the Amendments to the CES and Aerotek Agreements.[21]

1. The Holliday and Green Suits:

The incident from which the Holliday and Green suits arise occurred on July 19, 2012. For the period December 3, 2011 to December 3, 2012, ZeroChaos maintained a policy with

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[19] *Id.*, p 12. The term "Supplier" as used in the Management Agreement refers to ZeroChaos. *Id.* at p 1. The term "Customer" refers to RightThing and the term "End Client" refers to Chrysler. *Id.* The term "Staffing Companies" refers to third party vendors selected by ZeroChaos. *Id.*

[20] Def's Motion, Exh C, Maarouf Affidavit, Attachments 1-6.

[21] *Id.* Attachments 7, 9, and 11.

National Union.[22] The Policy included a "Blanket Additional Insured Endorsement," which provided that "[a]ny person or organization as required by your contract or agreement shall be an Insured but only with respect to that person or organization's liability arising out of your operations as a staffing service or premises owned by or rented by you."[23] The Policy also included a "Hired Auto and Non-Owned Liability Endorsement" which, together with a commercial umbrella insurance policy issued by National Union, had limits of $11,000,000 per occurrence.

Chrysler does not dispute that the National Union Policy contained the above referenced endorsements and policy limits. Rather, Chrysler argues that National Union "rescinded its decision to defend and indemnify" Chrysler based upon National Union's position that its policy was for excess coverage only. Chrysler asserts that "if ZeroChaos had purchased adequate insurance that provided primary coverage" Chrysler would not have had to contribute to the settlement of the Holliday and Green suits.[24] This Court disagrees.

First, Chrysler has not presented any evidence that National Union "rescinded" the decision to defend and indemnify Chrysler for the Holliday and Green suits. National Union issued two "Reservation of Rights" letters.[25] In the letter presented to this Court, National Union does not "deny" coverage. Rather, National Union states its "coverage positions" and that it "expressly reserves all of its rights under the Policy, at law or in equity, including the right to assert additional defenses to any claims for coverage, if subsequent information indicates that such action is warranted."[26] One of the coverage positions is that the National Union Policy was excess. National Union also set forth its position that coverage may also be barred by "Section II B of Endorsement No. 9" and "Section IV B of Endorsement No. 9-Exclusion T."

National Union's "coverage position" that its policy was an excess policy does not mandate the conclusion that ZeroChaos breached the Management Agreement by failing to provide primary coverage. "A reservation of rights is a term of art designed to allow a liability

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[22] *Id.* Attachment 1.
[23] *Id.*
[24] Pl's Response, p 12.
[25] Chrysler has presented only one letter dated October 2, 2014. Pl's Motion, Exh 9. However, that letter references an earlier letter dated December 18, 2012, and serves as a supplement thereto.
[26] *Id.* at p 3.

insurer to provide a defense while still preserving the option to later litigate and ultimately deny coverage." 14A Couch, Insurance, 3rd (rev ed), § 202:39. Chrysler has presented no analysis of the relevant provisions of the National Union Policy and has provided no analysis of applicable law in support of its contention that the policy was an excess policy. Chrysler has not supported its claim that ZeroChaos breached the Management Agreement by failing to provide primary coverage.

That said, the Court finds that Chrysler has supported its claim that ZeroChaos breached the 9.2 of the Management Agreement by not requiring CES to name Chrysler "as additional insured on the required commercial general liability, automobile liability and umbrella liability coverage." The Original Staffing Company Agreement between ZeroChaos and CES states that CES "is required to provide continuous insurance coverage" including automobile liability insurance coverage for "all owned, non-owned, leased, and hired vehicles" with policy limits of not less than $5,000,000.[27] Additionally, the Original Staffing Company Agreement requires the insurance be primary and Chrysler be named as an Additional Insured.[28] However, in an Amendment dated March 22, 2012, Section 1.4 of Schedule E to the Staffing Agreement was changed. The second sentence of Section 1.4 of Schedule E originally stated that "[e]ach policy required pursuant to Section 1.0 subsections (b) and (c) shall name [Chrysler], ZeroChaos and their respective Affiliates and assignees as Additional Insured." This provision complied with the requirements of Section 9.2 and Schedule 2 of the Management Agreement. However, the March 22, 2012 Amendment to the Staffing Agreement deleted the second sentence and replaced it with the following language:

> General Liability policy required pursuant to Section 1.0 subsection (b) shall name Customer, ZeroChaos and their respective Affiliates and assignees as Additional Insured for the negligence of CES in its role and obligations under this agreement as a temporary staffing company. *Automobile Liability Insurance policy required pursuant to Section 1.0 subsection (c) shall name [Chrysler], ZeroChaos and their respective Affiliates and assignees as Additional Insured on Staffing Company owned automobiles.*[29]

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[27] Def's Motion, Exh C, Maarouf Affidavit, Attachment 7, CES Staffing Company Agreement, § 5 and Schedule E § 1(c).

[28] *Id.* Schedule E, §§ 1.3 and 1.4. Under the Staffing Agreement the term "Customer" refers to RightThing's customer which is Chrysler. *See* Staffing Agreement Preliminary Statement.

[29] *Id.,* Amendment #1 to Staffing Company Agreement (emphasis added).

Under Section 9.2 of the Management Agreement, ZeroChaos agreed to "require" the Staffing Companies to name Chrysler as an Additional Insured on the required automobile liability coverage. As noted above, the required coverage for Staffing Companies was set forth in Schedule 2 of the Management Agreement as liability coverage "for all *owned, non-owned, leased, and hired vehicles* providing coverage for bodily injury and property damage liability with a combined single limit of not less than five million dollars ($5,000,000) per accident." However, under the Amended Staffing Company Agreement, ZeroChaos only required CES to name Chrysler as an Additional Insured on *owned* automobiles.[30] Thus, ZeroChaos did not comply with the requirements of Section 9.2 of the Management Agreement.

Although the Court concludes that ZeroChaos did not comply with Section 9.2 of the Management Agreement, the inquiry does not end here. ZeroChaos argues that Chrysler's breach of contract claim for failure to maintain adequate insurance is barred by the statute of limitations because the Complaint in this case was filed more than five years after the alleged breach(es) occurred. The parties agree that ZeroChaos was first named as a Defendant in this action on January 30, 2018.[31]

Under Florida law, the statute of limitations is five years for a claim of breach of a written contract. Fla Stat Ann § 95.11(2)(b). "The intent of section 95.11(2)(b) is to limit the commencement of actions from the time of their accrual." *State Farm Mut Auto Ins Co v Lee*, 678 So2d 818, 821 (Fla, 1996). "[A] cause of action accrues when the last element constituting the cause of action occurs. . . ." Fla Stat Ann § 95.031(1). "Generally, a cause of action on a contract accrues and the statute of limitations begins to run from the time of the breach of contract." *Lee*, 678 So2d at 821.

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[30] The Amendment to the "Additional Insured" provision was the basis for the position taken by CES that no insurance coverage existed under its policy for the Holliday and Green claims. *See* Pl's Motion, Exh 7, CES letter dated October 18, 2012.

[31] The original complaint in this action was filed on October 28, 2016 and named as defendants only RightThing and ADP RPO, LLC. On December 8, 2016, the case was removed to the United States District Court for the Eastern District of Michigan. On January 30, 2018, Chrysler filed an amended complaint adding as defendants ZeroChaos, CES, KYYBA and Aerotek. On December 20, 2018, the District Court entered an Order remanding the case to this Court. Following remand, on March 8, 2019, Chrysler filed its First Amended Complaint, and on May 30, 2019, Chrysler filed its Second Amended Complaint. On November 27, 2019, this Court denied Chrysler's Motion for Leave to File a Third Amended Complaint.

ZeroChaos argues that, under Florida law, a claim for breach of contract accrues at the time of the breach and, thus, any claim for ZeroChaos's failure to maintain insurance accrued on the date of the accident, i.e., July 19, 2012. It further argues that any claim that ZeroChaos failed to require CES to maintain adequate insurance accrued on March 22, 2012, the date that ZeroChaos and CES executed "Amendment #1" to the Staffing Company Agreement or at the latest in October 2012 when an agent of Chrysler was informed by a representative of CES that, under the amendment, "Additional Insured" coverage applied to owned vehicles only. Accordingly, ZeroChaos argues, the action commenced against it on January 30, 2018 was outside of the five-year limitation period.

Chrysler does not dispute the assertion that the alleged breaches occurred in 2012 as described by ZeroChaos or that it was informed of the amendment to the CES Staffing Agreement in October 2012. Rather, it argues that the final element of its claim, damages, did not occur until it was forced to assume its own defense and settle the *Green* and *Holliday* claims in 2014 and, therefore, it timely filed its claim against ZeroChaos on January 30, 2018.[32]

The argument made by Chrysler, however, has been rejected by Florida courts. *See Technical Packaging, Inc v Hanchett*, 992 So2d 309, 313 (Fla App, 2008) ("Notwithstanding the statutory 'last-element' principle of section 95.031(1), however, Florida case law consistently holds that a cause of action for breach of contract accrues and the limitations period commences at the time of the breach."). *See also Medical Jet, S A v Signature Support-Palm Beach, Inc*, 941 So2d 576, 578 (Fla App, 2006) ("Florida has followed this general rule that a cause of action for breach of contract accrues at the time of the breach, 'not from the time when consequential damages result or become ascertained.'"); *Holiday Furniture Factory Outlet Corp v State, Dep't of Corr*, 852 So2d 926, 928 (Fla App, 2003) ("A cause of action on a contract accrues and the limitations period commences at the time of the breach.") Accordingly, this Court agrees with ZeroChaos that any claim for breach of contract for failure to maintain insurance or to require CES to maintain insurance relating to the July 2012 accident is barred by the Florida statute of limitations.

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[32] Pl's Response, p 14. Chrysler does not argue the tolling of the limitations period by lack of discovery of the alleged breach(es), and any such argument would fail. *See Federal Ins Co v Southwest Florida Retirement Center, Inc*, 707 So2d 1119, 1122 (Fla, 1998); *Abbott Labs, Inc v Gen Elec Capital*, 765 So2d 737, 740 (Fla App, 2000).

Based upon the foregoing, the Court denies Chrysler's dispositive motion and grants ZeroChaos's dispositive motion with regard to any claim that ZeroChaos breached Sections 9.1 and 9.2 of the Management Agreement as to the Holliday and Green claims.

2. The Olson Lawsuit

The Olson suit arose from a June 2014 motor vehicle accident involving Martin (an alleged employee of KYYBA) driving a vehicle owned by Chrysler. For the period December 3, 2013 to December 3, 2014, ZeroChaos maintained insurance with Zurich American Insurance Company and American Guarantee & Liability Insurance Company.[33]

Chrysler argues that ZeroChaos failed to procure adequate insurance to cover the Olson claim and "the refusal of ZeroChaos' insurer to provide coverage and protect Chrysler as an additional insured" for the Olson claim constitutes a breach of Sections 9.1 and 9.2 of the Management Agreement.[34] Chrysler, however, provides no explanation of how the policy maintained by ZeroChaos was deficient. Moreover, no evidence exists to show that Chrysler tendered notice of a claim arising out of the Olson accident to ZeroChaos or that ZeroChaos's insurer was in any way involved with the Olson claim. In fact, Chrysler acknowledges tendering the Olson matter to KYYBA's insurer.[35] Consequently, Chrysler's claim for breach of contract based upon the assertion that ZeroChaos failed to maintain adequate insurance under Sections 9.1 and 9.2 of the Management Agreement fails where Chrysler did not even seek coverage from ZeroChaos's insurer and, thus, cannot claim to have suffered any damages related to ZeroChaos's alleged failure to maintain adequate insurance. *See Sharick v Southeastern Univ of Health Sciences, Inc*, 780 So2d 136, 139 (Fla App, 2000) (damages recoverable by a party injured by a breach of contract are those naturally resulted from the breach).

Chrysler also argues that ZeroChaos failed to require KYYBA to maintain adequate insurance. As cited, under Sections 9.1 and 9.2 of the Management Agreement, ZeroChaos agreed to require the Staffing Companies to maintain adequate insurance and to name

[33] Def's Motion, Exh C, Maarouf Affidavit, Attachment 3.
[34] Pl's Motion, p 10-11.
[35] Def's Motion, Exh F, Pl's Answers to Interrogatories 8 and 9.

Chrysler as an Additional Insured. ZeroChaos also agreed to provide to Chrysler, upon "reasonable written request, certificates evidencing such coverage."[36]

The Staffing Company Agreement between ZeroChaos and KYYBA states that KYYBA "is required to provide continuous insurance coverage" including automobile liability insurance coverage for "all owned, non-owned, leased, and hired vehicles" with policy limits of not less than $5,000,000."[37] Additionally, the Staffing Company Agreement requires that the insurance be primary, and that Chrysler be named as an Additional Insured.[38]

The Staffing Company Agreement between ZeroChaos and KYYBA demonstrates that ZeroChaos did require KYYBA to maintain adequate insurance and to name Chrysler as an Additional Insured.[39] Any failure of KYYBA to comply with the requirements of the Staffing Agreement does not mandate the conclusion that ZeroChaos breached the Management Agreement with Chrysler.

ZeroChaos agreed to "require" that the Staffing Companies maintain adequate insurance and name Chrysler as an Additional Insured; a review of the Staffing Agreements demonstrates that it indeed did so. Chrysler does not analyze the contractual term "require" as used by the parties. It makes no argument for a reading of Sections 9.1 and 9.2 of the Management Agreement, which would obligate ZeroChaos to take affirmative steps to "guarantee" coverage by the Staffing Companies. *See Wolfe v Wayne-Westland Community Sch*, 267 Mich App 130, 139; 703 NW2d 480 (2005) ("[a] party may not merely announce its position and leave it to the Court to discover and rationalize the basis for [its] claims . . . ."). Moreover, if ZeroChaos and Chrysler had intended that ZeroChaos "guarantee" or "assure" that the Staffing Companies maintain adequate insurance, they could have included such language in the Management Agreement. Likewise, if the parties had intended that ZeroChaos provide documentation evidencing adequate coverage in addition to or instead of the certificates of insurance they could have done so.

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[36] Chrysler failed to present any evidence that it made a written request for certificates of insurance. However, ZeroChaos presented to this Court the certificates of insurance issued as to each of the Staffing Companies for the relevant time periods. Def's Motion, Exh C, Attachments 8, 10, and 12.

[37] Def's Motion, Exh C, Maarouf Affidavit, Attachment 9, KYYBA Staffing Company Agreement, § 5 and Schedule E § 1(c).

[38] *Id.* Schedule E, §§ 1.3 and 1.4. Under the Staffing Agreement the term "Customer" refers to RightThing's customer which is Chrysler. *See* Staffing Agreement Preliminary Statement.

[39] There were no amendments to the Staffing Agreement between ZeroChaos and KYYBA.

Based upon the foregoing, the Court finds denies Chrysler's dispositive motion and grants ZeroChaos's dispositive motion as to any claim that ZeroChaos breached Sections 9.1 and 9.2 of the Management Agreement regarding the Olson claim.

3. The Ashraf Lawsuit

Ashraf suffered fatal injuries resulting from a December 2015 auto accident involving Sposito, who Aerotek allegedly employed to perform services for Chrysler. At the time of the accident, ZeroChaos maintained insurance with Zurich American Insurance Company and American Guarantee & Liability Insurance Company.[40]

Again, Chrysler presents no evidence to indicate that it tendered notice of a claim arising out of the accident involving Ashraf to ZeroChaos or that ZeroChaos's insurer was in any way involved with the Ashraf claim. Rather, Chrysler tendered the claim to Aerotek.[41] As explained above, Chrysler's claim that ZeroChaos breached Sections 9.1 and 9.2 of the Management Agreement by failing to maintain adequate insurance fails where Chrysler did not even seek coverage from ZeroChaos's insurer with regard to the Ashraf claim.

Chrysler also argues ZeroChaos failed to require Aerotek to maintain adequate insurance. The Staffing Company Agreement between ZeroChaos and Aerotek states that Aerotek "is required to provide continuous insurance coverage" including automobile liability insurance coverage for "all owned, non-owned, leased, and hired vehicles" with policy limits of not less than $5,000,000."[42] Additionally, the Staffing Company Agreement requires that the insurance be primary, and Chrysler be named as an Additional Insured.[43]

Under Sections 9.1 and 9.2 of the Management Agreement, ZeroChaos agreed to require the Staffing Companies to maintain adequate insurance and to name Chrysler as an Additional Insured. The Staffing Company Agreement between ZeroChaos and Aerotek demonstrates that ZeroChaos did require these actions. Although the Aerotek Staffing Agreement was amended on April 2, 2012, it does not appear that the Amendment affected the original insurance provisions in Section 5 or Schedule E § 1(c).[44]

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[40] Def's Motion, Exh C, Maarouf Affidavit, Attachment 5.
[41] Pl's Motion, Exhs 18 and 19.
[42] Def's Motion, Exh C, Maarouf Affidavit, Attachment 11, Aerotek Staffing Company Agreement, § 5 and Schedule E § 1(c).
[43] *Id.* Schedule E, §§ 1.3 and 1.4. Under the Staffing Agreement the term "Customer" refers to RightThing's customer which is Chrysler. *See* Staffing Agreement Preliminary Statement.
[44] *Id.,* Amendment #1 to the Aerotek Staffing Agreement.

Chrysler does not assert any way in which the ZeroChaos and Aerotek Staffing Agreement is deficient, but merely asserts the fact that the Staffing Companies failed to "defend and provide Chrysler with complete insurance coverage" is proof that ZeroChaos breached the Management Agreement. However, as explained above, ZeroChaos agreed only to "require" the Staffing Companies maintain adequate insurance, which it did with respect to Aerotek. Moreover, this Court previously determined that Aerotek did maintain insurance, including Chrysler as an Additional Insured.[45] Lastly, Aerotek's denial of Chrysler's request for defense and indemnification as to the Ashraf claim was based upon its position with regard to the indemnification provisions of the Amended Staffing Agreement, not upon the insurance provisions.[46]

For the above-stated reasons, the Court denies Chrysler's dispositive motion and grants ZeroChaos's dispositive motion with regard to any claim that ZeroChaos breached Sections 9.1 and 9.2 of the Management Agreement as to the Ashraf claim.

B. *Breach of Contract re: Section 2.1 of the Management Agreement*

Chrysler devotes several pages in its motion to the argument that summary disposition should be granted in its favor because ZeroChaos breached Section 2.1 of the Management Agreement. Specifically, Chrysler argues that Section 2.1 mandated the use of a "template" Staffing Company Agreement requiring the Staffing Companies to defend and indemnify Chrysler. Chrysler also argues ZeroChaos permitted CES and Aerotek to amend their Staffing Company Agreements to vary from the required template thereby breaching Section 2.1.[47]

However, as noted above, the only allegation of breach of contract made against ZeroChaos in Count III of the Second Amended Complaint are allegations that ZeroChaos breached Sections 9.1 and 9.2 of the Management Agreement regarding insurance. There are no allegations in Count III that ZeroChaos breached Section 2.1 of the Management

[45] Opinion and Order filed November 16, 2019.
[46] Pl's Motion, Exhs 18 and 19, Aerotek Correspondence.
[47] Section 2.1 of the Management Agreement states, in pertinent part that "Supplier shall enter into a written agreement with each Staffing Company providing Work/Services hereunder in substantially the form attached hereto as Exhibit 1, as it may be modified from time to time. Pl's Motion, Exh 2, Management Services Agreement, p 2.

Agreement. In fact, Chrysler, recognizing that breach of Section 2.1 was not pled in the Second Amended Complaint, moved for leave to file a "Third Amended Complaint" "to assert that if Aerotek's and CES's amendment of the [Staffing Company Agreement] precludes recovery for Plaintiff, then ZeroChaos breached the [Management Services Agreement] by permitting Aerotek and CES to amend the [Staffing Company Agreement] to Plaintiff's detriment."[48] By Order dated November 27, 2019, this Court rejected Chrysler's Motion for Leave to File the Third Amended Complaint.

Because the Second Amended Complaint contains no allegations that ZeroChaos breached Section 2.1 of the Management Agreement, it cannot be the basis for granting summary disposition in favor of Chrysler compelling denial of Chrysler's dispositive motion relative thereto.[49] *See* MCR 2.111(B).

IV.

THEREFORE, IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Disposition is **DENIED**, pursuant to MCR 2.116(C)(10), and Defendant APC Workforce Solutions, LLC d/b/a ZeroChaos's Motion for Summary Disposition is **GRANTED**, pursuant to MCR 2.116(C)(10). Plaintiff's Second Amended Complaint against said Defendant is **DISMISSED** with prejudice in its entirety.

IT IS SO ORDERED.

This Order does NOT resolve the last pending matter and does NOT close the case.

/s/ Martha Anderson
June 6, 2022
HON. MARTHA D. ANDERSON
CIRCUIT COURT JUDGE

Dated: 6/6/2022.

[48] Pl's Motion for Leave to File Third Amended Complaint, p 4. The Proposed Third Amended Complaint changed the title of Count III from "APC Workforce Solutions, LLC, d/b/a ZeroChaos Breach of Contract – Insurance" to "APC Workforce Solutions, LLC, d/b/a ZeroChaos, Breach of Contract" and added ¶ 46, which alleged that ZeroChaos breached the Management Agreement "by failing to enter into a written agreement with Aerotek and CES which is in substantially the same form as the [Staffing Company Agreement] attached to the [Management Agreement] as exhibit 1." Chrysler's Proposed Third Amended Complaint, ¶ 47.

[49] Additionally, as ZeroChaos argues, any claims that the 2012 Amendments to the CES and Aerotek Staffing Agreements were a breach of Section 2.1 of the Management Agreement appear to be barred by the Statute of Limitations. *See* Discussion at pp 10-11, supra.