

UNITED STATES DISTRICT COURT

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
Plaintiffs

CIVIL ACTION NO. CV04-1981

VERSUS

MAG.: WILSON

TRAC-WORK, INC.  
Defendants

JUDGE: PATRICIA H. MINALDI

**REVISED FIRST SUPPLEMENTAL AND AMENDED  
THIRD PARTY COMPLAINT FOR DECLARATORY RELIEF**

NOW COMES, TRAC-WORK, INC., made defendant in the main demand, appearing through undersigned counsel as Third Party Plaintiff herein, who respectfully supplements and amend its Third Party Complaint as follows:

I.

Trac-Work, Inc. amends and supplements Paragraph 1 of its Original Third Party Demand to read as follows:

“1.

Made third party defendants herein are:

- i) EXECUTIVE RISK INDEMNITY, INC., a foreign insurer who is authorized to and is issuing policies of insurance in the States of Texas and Louisiana; and

- ii) FEDERAL INSURANCE COMPANY a foreign insurer who is authorized to and is issuing policies of insurance in the States of Texas and Louisiana;”

II.

Trac-Work, Inc. supplements and amends Paragraph 2 of the Original Third Party Complaint to read as follows:

“2.

At all relevant times herein, Third Party Defendants, FEDERAL INSURANCE COMPANY and/or EXECUTIVE RISK INDEMNITY, INC. insured Trac-Work against liability for alleged unlawful employment practices.”

III.

Trac-Work, Inc. supplements and amends the Original Third Party Complaint to add Paragraph 3a. as follows:

“3a.

At all relevant times FEDERAL INSURANCE COMPANY insured Trac-Work, Inc. for the claims made the subject of the Complaint filed by the EEOC herein and for any and all claims of Richard Shelton and the EEOC under a policy of insurance, and renewals thereof, bearing policy number 8180-13-81A DAL, in effect from July 10, 2001 to July 10, 2002.”

IV.

Trac-Work, Inc. supplements and amends Paragraph 4 of the Original Third Party Complaint to read as follows:

“4.

On or about August 26, 2002, FEDERAL INSURANCE COMPANY and/or EXECUTIVE RISK INDEMNITY, INC. were notified in writing, inter alia, of the “Charge of Discrimination” filed by Richard Shelton on or about June 25, 2002 with the EEOC.”

V.

Trac-Work, Inc. supplements and amends Paragraph 6 of the Original Third Party Complaint to read as follows:

“6.

After having received written notice of the “charge of discrimination” filed by Richard Shelton with the EEOC, and with full knowledge of same, FEDERAL INSURANCE COMPANY and/or EXECUTIVE RISK INDEMNITY, INC. renewed the policy of insurance issued to and insuring Trac-Work, Inc.”

VI.

Trac-Work, Inc. supplements and amends Paragraph 7 of the Original Third Party Complaint to read as follows:

“7.

Upon learning of the Civil Complaint filed by the EEOC in the captioned matter, Trac-Work, Inc. again notified FEDERAL INSURANCE COMPANY and/or EXECUTIVE RISK INDEMNITY, INC. in writing of the claim and the filing of suit.”

VII.

Trac-Work, Inc. supplements and amends Paragraph 8 of the Original Third Party Complaint to read as follows:

“8.

The claim made the subject of the Complaint filed herein was made and reported to FEDERAL INSURANCE COMPANY and/or EXECUTIVE RISK INDEMNITY, INC. during the policy period or policy renewal period.”

VIII.

Trac-Work, Inc. supplements and amends Paragraph 9 of the Original Third Party Complaint to read as follows:

“9.

FEDERAL INSURANCE COMPANY and/or EXECUTIVE RISK INDEMNITY, INC. had actual or constructive notice of the claims of the EEOC and Richard Shelton made the subject of the Complaint in the captioned matter.”

IX.

Trac-Work, Inc. supplements and amends Paragraph 10 of the Original Third Party Complaint to read as follows:

“10.

Prior to and upon renewal of Trac-Work's employment practices insurance policy, FEDERAL INSURANCE COMPANY and/or EXECUTIVE RISK INDEMNITY, INC. had actual knowledge and/or notice of Richard Shelton's Charge of Discrimination lodged with the EEOC.”

X.

Trac-Work, Inc. supplements and amends Paragraph 11 of the Original Third Party Complaint to read as follows:

“11.

With full knowledge of Richard Shelton's "Charge of Discrimination," FEDERAL INSURANCE COMPANY and/or EXECUTIVE RISK INDEMNITY, INC. agreed to and did renew Trac-Work's employment practices policies and accepted premium for did continue coverage.”

XI.

Trac-Work, Inc. supplements and amends Paragraph 12 of the Original Third Party Complaint to read as follows:

“12.

On or about June 28, 2004 and November 5, 2004, FEDERAL INSURANCE COMPANY and/or EXECUTIVE RISK INDEMNITY, INC. notified Trac-Work that it/they was denying coverage for the claims of Richard Shelton and the EEOC's Complaint filed herein.”

XII.

Trac-Work, Inc. supplements and amends Paragraph 13 of the Original Third Party Complaint to read as follows:

“13.

Trac-Work alleges that FEDERAL INSURANCE COMPANY and/or EXECUTIVE RISK INDEMNITY, INC. lack a good faith basis for their denial of coverage and have no lawful basis for their denial of coverage.”

XIII.

Trac-Work, Inc. supplements and amends Paragraph 14 of the Original Third Party Complaint to read as follows:

“14.

Trac-Work alleges that FEDERAL INSURANCE COMPANY and/or EXECUTIVE RISK INDEMNITY, INC. denial of coverage is in bad faith and violates La. R.S. 22:1220 and/or La. R.S. 22:658 entitling Third Party Plaintiff, Trac-Work to recover penalties and attorney’s fees.”

XIV.

Trac-Work, Inc. supplements and amends Paragraph 15 of the Original Third Party Complaint to read as follows:

“15.

Trac-Work seeks a declaration from this Court confirming insurance coverage and ordering FEDERAL INSURANCE COMPANY and/or EXECUTIVE RISK INDEMNITY, INC. to defend and indemnify Trac-Work for all claims made the subject of the EEOC’s Complaint and the claims of Richard Shelton herein.”

WHEREFORE, Defendant and Third Party Plaintiff, TRAC-WORK, INC. prays:

- I. That the Revised First Supplemental and Amended Third Party Complaint be deemed good and sufficient and that after all due proceedings be had there be a judgment herein in favor of TRAC-WORK, INC. and against FEDERAL INSURANCE COMPANY AND EXECUTIVE RISK INDEMNITY, INC.;

- II. That FEDERAL INSURANCE COMPANY AND EXECUTIVE RISK INDEMNITY, INC. be served with a copy of Trac-Work, Inc.'s original Third party Complaint, the Revised First Supplemental and Amended Third Party Complaint and a copy of the Complaint filed by the EEOC, that FEDERAL INSURANCE COMPANY AND EXECUTIVE RISK INDEMNITY, INC. be cited to appear and defend same, and that after all due proceedings the Court declare that TRAC-WORK, INC. is insured for and against all claims made herein by the EEOC and/or Richard Shelton; and
- III. That FEDERAL INSURANCE COMPANY AND/OR EXECUTIVE RISK INDEMNITY, INC. be cast in judgment for the defense and indemnity of TRAC-WORK, INC. for all claims asserted in the proceedings; and
- IV. That FEDERAL INSURANCE COMPANY AND/OR EXECUTIVE RISK INDEMNITY, INC. be cast in judgment for penalties and attorney's fees for its bad faith and wrongful denial of insurance coverage.

Respectfully submitted:

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By: 

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**PLEASE HOLD SERVICE:**  
FEDERAL INSURANCE COMPANY  
And  
EXECUTIVE RISK INDEMNITY, INC.

**CERTIFICATE**

I hereby certify that a copy of the above and foregoing has been mailed by U. S. Mail, postage prepaid, to all known counsel of record, this 8<sup>th</sup> day of March, 2005 in Baton Rouge, Louisiana.

  
AMANDA G. CLARK