

UNITED STATES DISTRICT COURT

EASTER DISTRICT OF LOUISIANA

OANO, LLC

* **CIVIL ACTION**

versus

* **No.** _____

**AMERICAN CASUALTY COMPANY
OF READING, PA**

* **JUDGE:** _____

* * * * * **MAGISTRATE:** _____

COMPLAINT

The complaint of plaintiff, OANO, LLC, alleges upon information and belief as follows:

I.

Plaintiff, OANO, LLC, is a Louisiana limited liability corporation and all of the members of OANO, LLC are citizens of the State of Louisiana.

II.

Made defendant herein is American Casualty Company of Reading, PA, a Pennsylvania insurance corporation having its principal place of business in Pennsylvania or a state other than Louisiana.

III.

The amount in controversy in this case exceeds \$75,000 exclusive of interest and costs.

IV.

Jurisdiction exists by virtue of diversity of citizenship.

V.

Plaintiff is a group of orthopaedic surgeons who practice in a suite of offices situated on the fourth floor at 3434 Prytania Street in the City of New Orleans, which is a large medical office building known as the “Buckman Building.”

VI.

The Buckman Building is situated immediately across the street from the emergency room entrance to a very large hospital known as Touro Infirmary.

VII.

Touro Infirmary and the Buckman Building are so interconnected that they share a parking garage, parking garage elevators, and a passenger bridge directly linking the two buildings. A security desk is situated on the Buckman Building side of that pedestrian bridge so as to provide security services for both buildings.

VIII.

Upon the outbreak of the COVID-19 pandemic within the State of Louisiana, one of the first “hot spots” for that disease was a senior living facility and nursing home known as “Lambeth House” situated roughly one mile away from Touro Infirmary and the Buckman Building. Virtually all of the large number of very seriously ill elderly patients from Lambeth House were brought to Touro Infirmary which thereby became a primary treatment center in New Orleans during the earliest days of the COVID-19 pandemic. As the COVID-19 disease rapidly spread in New Orleans, Touro Infirmary continued to see a large number of patients seriously ill with that virus.

IX.

Many of the residents of Lambeth House coming to Touro Infirmary for evaluation and treatment of suspected cases of COVID-19 were brought by family members who parked in the garage of the Buckman Building and who utilized the elevators in the Buckman Building to access Touro Infirmary. Similarly, friends and family of these patients attempting to visit them at Touro Infirmary - - many of whom ultimately became symptomatic themselves - - entered the hospital by parking in the garage at the Buckman Building and transiting the passenger elevators in the Buckman Building and the patient bridge connecting the two facilities.

X.

At all times relevant to these proceedings, many of the physicians, nurses, technicians, and other healthcare professionals working at Touro Infirmary who were involved in the care of COVID-19 patients and routinely parked in the parking garage at the Buckman Building and would utilize the passenger elevators and the pedestrian bridge in order to enter and leave the hospital, thus, even if not themselves ill with COVID-19, they were constantly bringing the virus into the Buckman Building.

XI.

As a consequence of all of the foregoing, COVID-19 was actually present within plaintiff's suite of offices in the Buckman Building; or, in the alternative, the threat of actual presence of COVID-19 within the Buckman Building and, in particular, plaintiff's suite of offices in the Buckman Building, was so substantial that, as doctors and surgeons engaged in providing medical and surgical care, it would have been irresponsible for plaintiff not to behave in all respects as if COVID-19 was actually present within its suite of offices in the Buckman Building.

XII.

The actual or highly likely threatened presence of COVID-19 constitutes physical loss of or actual physical damage to plaintiff's premises.

XIII.

Commencing on March 16, 2020, plaintiff was put in the position where a sudden and dramatic loss of business income was directly caused by the suspension of operations resulting in whole or in part from the damage to its property as a result of COVID-19.

XIV.

Plaintiff's responsible actions in suspending the in-person practice of orthopaedic surgery on March 16, 2020 then became a mandated suspension of operations upon orders issued by the State of Louisiana Department of Health and subsequently by orders issued by the Governor of the State of Louisiana and the Mayor of the City of New Orleans. The effect of those orders was again reiterated by the Louisiana State Board of Medical Examiners in correspondence directed to all of its member physicians and surgeons, including plaintiff.

XV.

The aforesaid action by civil authorities was prompted by the direct physical loss of or damage to medical and surgical facilities caused by COVID-19 and that action by civil authorities prohibited access to the insured premises by all of plaintiff's non-emergency surgical patients, resulting in the losses alleged herein.

XVI.

At all material times, plaintiff was covered by a policy of insurance, Policy No. 2097857555, issued by the defendant, American Casualty Company of Reading, PA (hereinafter "ACC"), which

policy included among the broadest business interruption provisions available in Louisiana. The policy not only provided coverage for business income loss resulting from COVID-19 but also provided coverage for suspension of business operations mandated by orders from governmental authorities.

XVII.

The policy issued by ACC is largely comprised of forms created by Insurance Services Organization, Inc. (“ISO”) which is in the business of providing recommended coverage forms to insurance companies throughout the United States.

XVIII.

In 2006, in the face of a SARS epidemic, ISO issued notice to its subscribing insurance companies, including ACC, to the effect that it was necessary to include within a property insurance policy a specific exclusion for viruses as the then standard policy forms were not effective to exclude coverage for viruses.

XIX.

Pursuant to the foregoing, ISO created a specific recommended virus exclusion.

XX.

The virus exclusion created by ISO was reviewed and approved by the Insurance Commissioner for the State of Louisiana in 2006.

XXI.

Despite receiving notification from ISO that a specific virus exclusion was necessary if an insurer intended to place same beyond coverage, ACC consciously and purposefully chose not to utilize a virus exclusion in the policy issued to OANO.

XXII.

On March 20, 2020, plaintiff presented claims for loss of business income to defendant and, without just cause and without fully investigating the merits of plaintiff's claim, on April 30, 2020 defendant wrongfully denied plaintiff's claim in direct contravention of the terms and conditions of a policy.

XXIII.

Plaintiff's losses cannot be completely and accurately totaled at this time; however, those losses exceed \$1,500,000 and continue to accrue.

XXIV.

Not only has the defendant wrongfully and improperly denied the claim by plaintiff but it was done so based upon an unsupportable interpretation of its own policy which, under Louisiana law, makes defendant's denial of plaintiff's claim arbitrary and capricious as a matter of both fact and law, thus entitling plaintiff to statutory penalties as provided under Louisiana law.

XXV.

Plaintiff is entitled to and hereby demands trial by jury.

WHEREFORE, plaintiff prays that the defendant be cited and served with a copy of this Complaint compelling it to appear and answer same and, after all due proceedings, judgment be entered for all relief itemized above, together with all costs of these proceedings, interest from the date of judicial demand, and any and all other relief which is just and appropriate under the circumstances.

Respectfully submitted:

/s/ Scott E. Silbert

SCOTT E. SILBERT, TA (#12068)

JONATHAN P. FRIEDMAN (#25675)

W. GREGORY MERRITT (#18340)

Silbert, Pitre & Friedman

909 Poydras Street, Suite 2130

New Orleans, Louisiana 70112

Phone: (504) 581-6200

Fax: (504) 584-5270

Emails:

Scott@spflawyers.com;

Greg@spflawyers.com; Jonathan@spflawyers.com

PLEASE SERVE:

**AMERICAN CASUALTY COMPANY
OF READING, PA**

through its agent for service of process:

Louisiana Secretary of State

8585 Archives Ave.

Baton Rouge, LA 70809