

**IN THE CIRCUIT COURT OF THE
2ND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA**

FLORIDA WELLNESS CENTER OF
TALLAHASSEE, INC.,

Plaintiff,

v.

HARTFORD CASUALTY INSURANCE
COMPANY,

Defendant.

Case No. 2020 CA 000807

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, FLORIDA WELLNESS CENTER OF TALLAHASSEE, INC., by and through undersigned counsel, submit this Complaint against Defendant, HARTFORD CASUALTY INSURANCE COMPANY. As its Complaint, Plaintiff asserts and alleges as follows:

Introduction

1. This action arises from the denial of commercial insurance benefits. Plaintiff owns and operates a chiropractic medical practice located at 2339 N. Monroe Street, Tallahassee, Florida. Plaintiff purchased and Defendant issued a commercial lines insurance policy numbered 21SBABX8049 (the “**Policy**”) containing coverage for, amongst other things, business income, extra expense, virus and civil authority. A complete copy of the Policy is within Defendant’s possession.

2. In late 2019 and early 2020, an outbreak of respiratory illness caused by a novel coronavirus n/k/a COVID-19 started to infect humans across the globe. On March

11, 2020, the World Health Organization (“WHO”) declared the COVID-19 outbreak a pandemic (i.e. a global outbreak of disease).

3. Throughout the month of March 2020, governments around the world, including the U.S. Government, State of Florida and Leon County began ordering the shutdown of non-essential businesses and ordering citizens to stay at home in order to slow the spread of COVID-19 and reduce the health and economic impact of the pandemic.

4. After Plaintiff’s business was severely interrupted and lost a significant amount of income, it made a claim with Defendant under the Policy (the “**Claim**”). Defendant acknowledged the Claim, assigned it claim number Y93F53172, and subsequently denied the Claim by letter dated April 7, 2020. A copy of the denial letter is attached hereto as **Exhibit “A”**.

5. Rather than investigate the claim, determine coverage applicability, and pay the proper amounts, Defendant sent a generic denial letter and attachment that was created for all of its policyholders’ claims for business income coverage. It is clear from a review of the denial letter that Defendant is taking the position that no matter the circumstances which led to a policyholders’ business income losses resulting from this pandemic, Defendant alleges to have an applicable provision in the Policy to deny coverage. The denial letter fails to solely address the relevant provisions of Plaintiff’s Policy. Instead, it references provisions and defenses that are not applicable to Plaintiff’s claim. In fact, at one point in the denial letter Defendant states that the policy contains a “*potentially applicable exclusion*”. Another reference states, “*to the extent you are making a claim for loss of business income from a dependent property...*”.

6. This ‘kitchen sink’ approach is unconscionable, reeks of bad faith, and goes so far as to assert that even though the Policy does include a specific endorsement providing affirmative coverage for losses caused by a virus, that somehow that endorsement does not apply in this particular situation. The Plaintiff asks, if not now...when?

7. The Limited Fungi, Bacteria or Virus Coverage endorsement (SS 40 93 07 05), attached hereto as **Exhibit “B”**, states that Defendant will pay for loss or damage by virus. It proceeds to state that the term loss or damage means: “direct physical loss or direct physical damage”. If Defendant does not believe that a virus is capable of causing direct physical loss or direct physical damage, then why would they offer such an endorsement. Moreover, under Defendant’s own admission in the denial letter, they state that an exclusion for physical loss or physical damage caused by pollutants precludes coverage for a virus. Under that argument, they are admitting that they issued an endorsement offering additional coverage for which Plaintiff paid valuable consideration that Defendant had no intention of honoring. At worst that is fraud, and at best ambiguous. Furthermore, by asserting that COVID-19 is excluded because of the pollutant exclusion, then they are acknowledging that a virus is capable of causing physical loss or physical damage. Defendant desires to have it both ways.

8. Plaintiff therefore brings this action to obtain the benefits due under the Policy and to seek a declaratory judgment on relevant provisions of the Policy on which the parties are relying.

Parties and Jurisdiction

9. Plaintiff is a Florida entity with its principal place of business in this County.

10. Defendant is an insurance company with its principal place of business in the Hartford, Connecticut. Defendant has engaged in business in this County by issuing insurance policies and adjusting claims.

11. The amount at issue in this case is in excess of \$30,000.00, exclusive of interest, attorneys' fees and costs.

12. Venue is proper in this Circuit because the conduct at issue occurred in this County and Defendant is present in this Circuit through its business activities.

Factual Allegations

13. On March 1, 2020, Florida Governor Ron Desantis issued Executive Order Number 20-51, directing the State Health Officer and Surgeon General to declare a Public Health Emergency due to the discovery of COVID-19 in Florida.

14. On March 16, 2020, the Board of County Commissioners of Leon County, Florida, declared a local State of Emergency, which was subsequently extended and amended through additional proclamations mandating, amongst other things, stay at home orders, social distancing requirements and a curfew.

15. Per the Centers for Disease Control and Prevention ("CDC"), there is no vaccine to protect against COVID-19 and no medications approved to treat it.

16. It may take up to 14 days for an infected person to have symptoms.

17. A large percentage of persons who tested positive for COVID-19 showed no symptoms prior to testing. In fact, the director of the CDC, Dr. Robert Redfield, stated that "we have pretty much confirmed [now is] that a significant number of individuals that are infected actually remain asymptomatic. That may be as many as 25%. That's important,

because now you have individuals that may not have any symptoms that can contribute to transmission, and we have learned that in fact they do contribute to transmission”.

18. The WHO states that COVID-19 can spread directly from person to person through small droplets from the nose or mouth and also indirectly when a person with COVID-19 contaminates objects and surfaces, and other people touch these objects or surfaces and then touch their eyes, nose or mouth.

19. Plaintiff’s business provides treatment to patients which requires direct physical contact between caregiver and patient as well as physical therapy modalities which would result in persons being closer than six feet from each other.

20. In an effort to protect its employees and patients from possible exposure to COVID-19 and safeguard its property from loss or damage, Plaintiff notified its patients to refrain from coming into Plaintiff’s place of business if the patient was experiencing any symptoms related to COVID-19 or had been exposed to someone who had been diagnosed with COVID-19. As a result, many patients cancelled their appointments which resulted in a loss of income for Plaintiff.

21. The Policy is an “All-Risk” policy and contains coverage for loss of business income and extra expenses, and due to virus.

22. On April 1, 2020, Florida Governor Ron DeSantis issued Executive Order Number 20-91 which ordered that all persons in Florida shall limit their movements and personal interactions outside of their home to only those necessary to obtain or provide essential services or conduct essential services. Said order is set to expire on April 30, 2020 unless extended by subsequent order. The Governor’s executive order also directs seniors and those with underlying medical conditions to stay at home.

23. As a result of the ‘stay-at-home’ order and other civil authority actions, many of Plaintiff’s current and potential patients have been unable to seek treatment from Plaintiff resulting in significant financial losses.

24. The CDC states that COVID-19 may remain viable for hours to days on surfaces and recommends the routine cleaning of all frequently touched surfaces and disinfection-level deep cleaning of surfaces thought to be contaminated.

25. The infectious particles of COVID-19 are invisible to the naked eye, and it is not feasible to test every surface to determine if it has been contaminated. Therefore, the business owner must either continuously sanitize every surface used by its customers or incur a loss of use of such property.

26. A person known to be infected with COVID-19 who touches a surface is contaminating that property thereby causing a loss and/or damage to that property without the consent of the property owner.

27. After a room is occupied by a person with confirmed or suspected COVID-19, the CDC, in addition to ensuring sufficient time for enough air changes to remove potentially infectious particles, recommends cleaning and disinfecting environmental surfaces and shared equipment before a room is used by another person otherwise there is significant risk of re-contamination.

28. Property owned by Plaintiff or others is at risk of being contaminated by direct or indirect contact by an infected person(s) either knowingly or unwittingly. Every surface can be presumed to be contaminated because the virus is invisible to the naked eye, there is no readily available test to determine if a surface is infected, and many people unknowingly have the virus.

29. Accordingly, the presence or danger of COVID-19 on property renders that property unusable and non-functioning even though structurally unaltered. Therefore, Plaintiff suffers a direct and physical loss of use of that property.

30. The State of Florida did not have a sufficient number of testing kits for COVID-19. In order to be tested at one of the few available testing sites you first had to be exhibiting symptoms and it often took three to five days for results to be determined. Plaintiff nor their patients had any reliable way of knowing whether they or any other patient were infected by COVID-19.

31. Plaintiff will incur extra expenses for continually cleaning and sanitizing its equipment and property.

32. Pursuant to the Policy, Defendant insured Plaintiff for physical loss of property, business income losses and extra expenses.

33. Plaintiff suffered a loss of property and business income, incurred extra expenses, and other damages as a direct result of the pandemic, acts of civil authority and other causes beyond its control.

34. Plaintiff submitted a claim to Defendant under the Policy.

35. Defendant failed to inspect or test the property in order to prove that the claim is excluded from coverage.

36. On April 7, 2020, Defendant denied Plaintiff's claim.

37. Defendant's wrongful denial of coverage breached the Policy.

38. Subject to limitations and exclusions, the Policy insured against all risks of direct physical loss or damage to Plaintiff's property including vandalism.

39. The Policy written by Defendant covers “loss” or “damage” to property. The inclusion of both words presumes the Defendant intended that these words have separate meanings. Therefore, the Policy expressly contemplates that there can be a loss without physical damage.

40. The first paragraph of the denial letter states, “*We have completed a review of your loss and have determined that since the coronavirus did not cause property damage at your place of business or in the immediate area, this business income loss is not covered*”.

41. However, Defendant did not conduct any testing at Plaintiff’s place of business nor, we assume, within the immediate area. Defendant did not speak with any employees, patients or neighboring business owners. Defendant also limits its claim analysis to damage thereby excluding an entire type of loss. These are critical deficiencies in the requirements of a reasonable claim investigation prior to rendering a coverage determination with catastrophic economic consequences.

42. This Policy included an endorsement expressly providing, subject to its terms, affirmative coverage for a virus. Thus, implying that Defendant did not intend for a virus to be considered a pollutant under the Policy. Accordingly, Plaintiff reasonably expected that the insurance they purchased from Defendant included coverage for losses caused by viruses like COVID-19.

43. The denial letter stated that “*even if coverage were otherwise available for loss caused by coronavirus, the pollution exclusion could further bar coverage for the loss*”. Accordingly, Defendant was using its own policy language to exclude coverage for something it was collecting a premium for offering such coverage.

44. A pandemic is a type of risk not excluded under the Policy.

45. Although not part of the Policy, specific exclusions for loss due to virus do exist and are commonly used in commercial insurance policies. In fact, ISO CP 01 10 07 06 titled “Exclusion of Loss Due to Virus or Bacteria” was created for exactly that purpose.

46. Not only did Defendant issue their denial of the claim without conducting any meaningful coverage investigation as required, they did so with full knowledge that the Policy contained an endorsement providing coverage for exactly this type of loss.

47. Defendant, having failed to investigate the claim, had no reasonable basis for denying the claim.

48. Defendant’s failure to fairly adjust the claim, investigate the loss and cover undisputed damage constitutes bad faith, as does their widescale and uniform denial of their other policyholders’ business income coverages for losses due to COVID-19.

49. As a result of Defendant’s wrongful denial of the claim, Plaintiff files this action for declaratory judgment establishing that they are entitled to receive the benefit of the insurance coverage they purchased, for indemnification of the business losses they have sustained, for breach of contract, and for bad faith claims handling.

Causes of Action

COUNT I **DECLARATORY JUDGMENT**

50. Plaintiff adopts and realleges paragraphs 1 through 49, as fully alleged herein.

51. Florida Statute §86.021 creates a right to declaratory judgment when a question of construction or validity arises under a contract.

52. The purpose of a declaratory judgment is to afford relief for a person's insecurity and uncertainty with respect to their rights, status, or other equitable or legal relations.

53. There is a bona fide, actual, present need for a declaratory judgment to determine this matter.

54. Plaintiff asks the Court to affirm that a pandemic is a covered cause of loss not subject to any exclusion under the Policy.

55. Plaintiff asks the Court to affirm that contamination from COVID-19 constitutes a direct physical loss or damage to property.

56. Plaintiff asks the Court to affirm that the inability to use property because of the risk of contamination from COVID-19 is tantamount to direct physical loss of that property.

57. Plaintiff asks the Court to affirm that acts of Civil Authority are tantamount to a direct physical loss or damage to property.

58. Plaintiff asks the Court to declare that Defendant is obligated to pay for Plaintiff's losses.

COUNT II
BREACH OF INSURANCE CONTRACT

59. Plaintiff incorporates by reference paragraphs 1-49 above, as if alleged in this Count.

60. Plaintiff and Defendant entered into a valid and enforceable insurance contract.

61. Plaintiff gave valuable consideration in the form of premium payments in exchange for the promise of insurance coverage in the event of a loss of business income.

62. Plaintiff made a claim for coverage for business income, acts of civil authority and virus.

63. Defendant breached the insurance contract by failing to investigate the loss or comply with the loss settlement and payment provisions.

64. Defendant breached the insurance contract by denying coverage for Plaintiff's losses, which were due to covered perils not subject to any exclusion.

65. Plaintiff complied with its obligations under the insurance contract.

66. Plaintiff has been injured and suffered financial harm as a result of Defendant's breach of the insurance contract.

COUNT III
STATUTORY BAD FAITH CLAIM PURSUANT TO FLA. STAT. SEC. 624.155

67. Plaintiff adopts and realleges paragraphs 1 through 49, as fully alleged herein.

68. Pursuant to Fla. Stat. Sec. 624.155, the Plaintiff has a statutory cause of action for bad faith due to the Defendant's general business practice of willful, wanton, immoral, unlawful, malicious and/or deceptive claims handling practices (misconduct collectively referred to as "Bad Faith"). More specifically, Defendant denied the claim by sending Plaintiff a general denial letter clearly intended for use with multiple policyholders regardless of individual facts or policy terms and without conducting an inspection of the property or any investigation or inquiry.

69. The exhaustively stated basis for which this action is predicated is set forth in the civil remedies notice (CRN) which is attached hereto, incorporated by reference, and identified as **Exhibit "C"**. Including its subparts, the CRN comports with the condition precedent set forth under Fla. Stat. Sec. 624.155(3).

70. The CRN was duly filed with the Florida Department of Financial Services and was served upon Defendant via electronic mail to the Defendant's property claim representative on April 23, 2020.

71. Per governing law (*Fridman v. Safeco Ins. Co. of Illinois*, 185 So.3d 1214 (Fla. 2016)), this action is subject to abatement until such time as the sixty (60) day notice requirement for the CRN expires and liability is adjudicated and/or confessed in the Plaintiffs favor as it relates to the claim(s) for relief per Counts I and/or II of this Complaint.

72. However, and for the reasons stated in the CRN, Plaintiff is entitled to punitive damages, attorneys' fees, extra-contractual damages, and costs once the referenced conditions have been qualified and the abatement has been lifted. *Allstate Ins. Co., v. Lovell*, 530 So. 2d 1106 (Fla. 3d DCA 1988); *Schimmel v. Aetna Casualty & Sur. Co.*, 506 2d. 1162 (Fla. 3d DCA 1987).

Prayer for Relief

WHEREFORE, Plaintiff respectfully requests that this Court grant Declaratory Judgment for the Plaintiff, declaring that:

A. A pandemic is a covered cause of loss not subject to any exclusion under the Policy.

B. Contamination from COVID-19 constitutes a direct physical loss or damage to property.

C. The inability to use property because of the risk of contamination from COVID-19 is tantamount to direct physical loss of that property.

D. Acts of Civil Authority are tantamount to a direct physical loss or damage to property.

E. Defendant is obligated to pay for Plaintiff's losses.

WHEREFORE, Plaintiff requests that after a trial on the merits, the Court award it:

- A. A judgment declaring Defendant in breach of the insurance contract for denying their claim;
- B. A judgment awarding Plaintiff compensatory damages for Defendant's denial of the claim;
- C. A judgment awarding Plaintiff attorney's fees pursuant to Fla. Stat. § 627.428;
- D. A judgment awarding Plaintiff pre-judgment interest pursuant to Fla. Stat. § 627.70131.
- E. A judgment awarding Plaintiff punitive damages for Defendant's bad faith;
- F. A judgment awarding Plaintiff post-judgment interest; and
- G. Such other relief that that Court deems proper.

Jury Demand

Plaintiff demands a jury trial on all issues to which they are so entitled.

Respectfully submitted this 25th day of April 2020.

<u>/s/ Eric M. Fischer</u> Fla. Bar. No. 962422 Matthew D. Landau Fla. Bar. No. 445967 Paul Kunz Fla. Bar. No. 159492 THE LANDAU LAW GROUP, P.A. 1200 North Federal Highway, Ste. 200 Boca Raton, FL 33432 Phone: (954) 964-0900 eric@thelandaulawgroup.com	<u>/s/Thayer A. Musa</u> Thayer A. Musa, Esq. Fla. Bar. No. 0562211 LAW OFFICES OF THAYER A. MUSA 9008 SW 152 ST. Miami, FL 32157 Office: 305-233-6872 Fax: 305-235-6872 thayer@musalaw.com
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Co-counsel for Plaintiff

EXHIBIT “A”

[see attached Denial Letter]



THE HARTFORD
CAT CLAIM OFFICE
P. O. BOX 14271
LEXINGTON KY 40512

April 7, 2020

FLORIDA WELLNESS CENTER OF TALLAHASSEE, INC.
207 N Krome Ave
Homestead FL 33030

Re: Insured: FLORIDA WELLNESS CENTER OF TALLAHASSEE, INC.
Claimant:
Date of Loss: March 9, 2020
Event Number: CP0018687463
Claim Number: Y93 F 53172

Dear FLORIDA WELLNESS CENTER OF TALLAHASSEE, INC.:

We have completed a review of your loss and have determined that since the coronavirus did not cause property damage at your place of business or in the immediate area, this business income loss is not covered. Even if the virus did cause damage, it is excluded from the policy, and the limited coverage available for losses caused by virus does not apply to the facts of your loss.

As we understand the facts, you are suffering from a loss of business income because you, or a business you depend on, have had to close or limit your business to help prevent the spread of COVID-19, the disease caused by the novel coronavirus.

For more details on how we came to this decision, please see the information on the following pages. It lists the relevant portions of your insurance policy and explains how they apply to your situation.

If you believe there are additional facts Hartford should consider, please let us know, and we will reopen your claim.

We know this virus has led to unprecedented circumstances and care very much about the wellbeing of all our customers. For more on possible government support for small business at this time, you might like to visit <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>.

If you have any questions, please feel free to contact me at the telephone number listed below.

The foregoing should not be construed as a waiver of any of Hartford's rights and defenses under your policy number, and Hartford specifically reserves its right to modify or supplement this review of coverage based upon any additional information which it may obtain and/or any other grounds which may appear.

Sincerely,

Leo Herrera

Leo Herrera
Virtual Property Claim Representative
Toll Free Number: (630) 692 - 8187
leonel.herrera@thehartford.com

Writing Company Name: Hartford Casualty Insurance Company

CC: Matthew Landau, HUB INTERNATIONAL FLORIDA/PHS via U.S.Mail

CC: Agent

COVERAGE DECISION DETAILS

We are basing this determination on the following policy language found within the Special Property Coverage Form (SS 00 07 07 05), made part of your policy, which states, in part, as follows:

A. COVERAGE

We will pay for direct physical loss of or physical damage to Covered Property at the premises described in the Declarations (also called "scheduled premises"¹) in this policy) caused by or resulting from a Covered Cause of Loss.

3. Covered Causes of Loss

RISKS OF DIRECT PHYSICAL LOSS unless the loss is:

- a. Excluded in Section B., **EXCLUSIONS**; or
- b. Limited in Paragraph A.4. Limitations; that follow.

This property policy protects your business personal property and/or building against risks of direct physical loss or damage at your Scheduled Premises. You have not identified any direct physical loss to any property at a scheduled premises.

The Additional Coverages section of the Special Property Coverage Form (SS 00 07 07 05) also provides as follows:

5. Additional Coverages

o. Business Income

- (1) We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your "operations" during the "period of restoration". *The suspension must be caused by direct physical loss of or physical damage to property at the "scheduled premises"* [emphasis added], including personal property in the open (or in a vehicle) within 1,000 feet of the "scheduled premises", caused by or resulting from a Covered Cause of Loss.
- (2) With respect to the requirements set forth in the preceding paragraph, if you occupy only part of the site at which the "scheduled premises" are located, your "scheduled premises" also means:
 - (a) The portion of the building which you rent, lease or occupy; and
 - (b) Any area within the building or on the site at which the "scheduled premises" are located, but only if that area services, or is used to gain access to, the "scheduled premises".
- (3) We will only pay for loss of Business Income that occurs within 12 consecutive months after the date of direct physical loss or physical damage.

This Additional Coverage is not subject to the Limits of Insurance.

- (5) With respect to the coverage provided in this Additional Coverage, suspension means:
 - (a) The partial slowdown or complete cessation of your business activities; or
 - (b) That part or all of the "scheduled premises" is rendered untenable as a result of a Covered Cause of Loss if coverage for Business Income applies to the policy.

The Business Income coverage is not provided for your claim because there has been no physical loss or damage caused by or resulting from a Covered Cause of Loss to property at a scheduled premises.

The Additional Coverages section of the Special Property Coverage Form (SS 00 07 07 05) also provides as follows:

q. Civil Authority

- (1) This insurance is extended to apply to the actual loss of Business Income you sustain when access to your "scheduled premises" is specifically prohibited by order of a civil authority *as the direct result of a Covered Cause of Loss to property in the immediate area of your "scheduled premises"* [emphasis added].
- (2) The coverage for Business Income will begin 72 hours after the order of a civil authority and coverage will end at the earlier of:
 - (a) When access is permitted to your "scheduled premises"; or
 - (b) 30 consecutive days after the order of the civil authority.

¹"Scheduled Premises" means any premises listed by location address in the Scheduled Premises section of the Declarations.

We have no information to indicate that a civil authority issued an order as a direct result of a covered cause of loss to property in the immediate area of your scheduled premises; accordingly, this additional coverage is not available for your claimed loss of business income. If you believe there is an order of a civil authority as the result of a Covered Cause of Loss to property in your immediate area, please immediately send it to my attention for review.

The Additional Coverages section of the Special Property Coverage Form (SS 00 07 07 05) also provides as follows:

s. Business Income from Dependent Properties

- (1) We will pay for the actual loss of Business Income you sustain due to direct physical loss or physical damage at the premises of a dependent property caused by or resulting from a Covered Cause of Loss.

The most we will pay under this Additional Coverage is \$5,000 in any one occurrence unless a higher Limit of Insurance is indicated in the Declarations.

- (4) Dependent Property means property owned, leased or operated by others whom you depend on to:

(a) Deliver materials or services to you or to others for your account. But services do not include:

- (i) Water, communication, power services or any other utility services; or
- (ii) Any type of web site, or Internet service.

(b) Accept your products or services;

(c) Manufacture your products for delivery to your customers under contract for sale; or

(d) Attract customers to your business premises.

The dependent property must be located in the coverage territory⁽²⁾ of this policy.

- (5) The coverage period for Business Income under this Additional Coverage:

(a) Begins 72 hours after the time of direct physical loss or physical damage caused by or resulting from a Covered Cause of Loss at the premises of the dependent property; and

(b) Ends on the date when the property at the premises of the dependent property should be repaired, rebuilt or replaced with reasonable speed and similar quality.

- (6) The Business Income coverage period, as stated in Paragraph (5), does not include any increased period required due to the enforcement of any ordinance or law that:

(a) Regulates the construction, use or repair, or requires the tearing down of any property; or

(b) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to, or assess the effects of "pollutants."

- (7) The definition of Business Income contained in the Business Income Addit [REDACTED] applies to this Business Income from Dependent Properties Additional Coverage

To the extent you are making a claim for loss of business income from a dependent property, no direct physical loss or damage caused by or resulting from a Covered Cause of Loss has occurred at a Dependent Property. Accordingly, there is no coverage for your claim under this coverage part.

We note that your policy also contains the following potentially applicable exclusion:

B. EXCLUSIONS

2. We will not pay for physical loss or physical damage caused by or resulting from⁽³⁾:

i. **Pollution:** We will not pay for loss or damage caused by or resulting from the discharge, dispersal, seepage, migration, release or escape of "pollutants and contaminants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss." But if physical loss or physical damage by the "specified causes of loss" results, we will pay for the resulting physical loss or physical damage caused by the "specified cause of loss."

²Coverage for Business Income from Dependent Property would be further denied if it were determined that the dependent property is outside of the coverage territory, which is the United States (including its territories and possessions), Puerto Rico, and Canada.

³Your policy may be amended to read "We will not pay for loss or damage caused by or resulting from..."

The policy also contains the following definitions:

G. PROPERTY DEFINITIONS

15. "Pollutants and Contaminants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and waste, or any other material which causes or threatens to cause physical loss, physical damage, impurity to property, unwholesomeness, undesirability, loss of marketability, loss of use of property, or which threatens human health or welfare. Waste includes materials to be recycled, reconditioned or reclaimed.

19. "Specified Cause of Loss" means the following:

Fire; lightning; explosion, windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking or cracking of any part of a system or appliance containing water or steam.

The coronavirus is understood to be an irritant or contaminant which causes or threatens to cause physical impurity, unwholesomeness and threatens human health or welfare. Further, the virus was not caused by a "Specified Cause of Loss". Accordingly, even if coverage were otherwise available for loss caused by coronavirus, the pollution exclusion could further bar coverage for the loss.

We note that your policy also contains the following potentially applicable exclusion:

B. EXCLUSIONS

2. We will not pay for physical loss or physical damage caused by or resulting from⁽⁴⁾:
- Consequential Losses;** Delay, loss of use or loss of market.

To the extent you are claiming physical loss or physical damage caused by loss of use or loss of market, coverage would be precluded based on the exclusion above.

Section **B. Exclusions** also provides as follows:

3. We will not pay for loss or damage caused by or resulting from any of the following. But if physical loss or physical damage by a Covered Cause of Loss results, we will pay for that resulting physical loss or damage.

b. **Acts or Decisions:** Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

Based on the exclusion cited above, we will not pay for loss or damage caused by or resulting from the decision of a person, group, organization or governmental body.

Lastly, your policy also includes a Limited Fungi, Bacteria or Virus Coverage endorsement (SS 40 93 07 05), which provides as follows:

A. Fungi, Bacteria or Virus Exclusions:

2. The following exclusion is added to Paragraph B.1. Exclusions of the Standard Property Coverage Form and the Special Property Coverage Form...:

i. "Fungi", Wet Rot, Dry Rot, Bacteria And Virus

We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss:

⁴Your policy may be amended to read "We will not pay for loss or damage caused by or resulting from..."

(1) Presence, growth, proliferation, spread or any activity of "fungi", wet rot, dry rot, bacteria or virus.

(2) But if "fungi", wet rot, dry rot, bacteria or virus results in a "specified cause of loss" to Covered Property, we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

(1) When "fungi", wet or dry rot, bacteria or virus results from fire or lightning; or

(2) To the extent that coverage is provided in the Additional Coverage – Limited Coverage for "Fungi", Wet Rot, Dry Rot, Bacteria and Virus with respect to loss or damage by a cause of loss other than fire or lightning.

This exclusion applies whether or not the loss event results in widespread damage or affects a substantial area.

Based on the exclusionary language above, we will not pay for loss or damage caused directly or indirectly by presence, growth, proliferation, spread or any activity of virus unless the virus results in a "specified cause of loss" (see definition cited earlier in this letter). As we understand your loss, the virus has not resulted in a specified cause of loss and there is no coverage for your claim based on the exclusion for virus.

The Limited Fungi, Bacteria or Virus Coverage endorsement (SS 40 93 07 05) also provides as follows:

B. The following Additional Coverage is added to Paragraph **A.4.** of the Standard Property Coverage Form or Paragraph **A.5.** of the Special Property Coverage Form, and applies to the optional coverage form SS 04 41, Computers and Media and SS 04 45, Personal Property of Others Form:

1. Limited Coverage For "Fungi", Wet Rot, Dry Rot, Bacteria and Virus

a. The coverage described in **1.b.** below only applies when the "fungi", wet or dry rot, bacteria or virus is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.

(1) A "specified cause of loss" other than fire or lightning;

(2) Equipment Breakdown Accident occurs to Equipment Breakdown Property, if Equipment Breakdown applies to the affected premises.

b. We will pay for loss or damage by "fungi", wet rot, dry rot, bacteria and virus. As used in this Limited Coverage, the term loss or damage means:

(1) Direct physical loss or direct physical damage to Covered Property caused by "fungi", wet rot, dry rot, bacteria or virus, including the cost of removal of the "fungi", wet rot, dry rot, bacteria or virus;

(2) The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungi", wet rot, dry rot, bacteria or virus; and

(3) The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungi", wet rot, dry rot, bacteria or virus are present.

c. Unless a higher Limit of Insurance is shown in the Declarations for Limited "Fungi", Bacteria or Virus Coverage, the coverage described under this Limited Coverage is No more than the Limit of Insurance stated in the Declarations for Building and Business Personal Property, but not greater than \$50,000.

As we understand your loss, the virus did not result from a specified cause of loss; therefore, there is no coverage for your claim based on the limited coverage for virus.

EXHIBIT “B”

[see attached Endorsement]



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITED FUNGI, BACTERIA OR VIRUS COVERAGE

This endorsement modifies insurance provided under the following:

**SPECIAL PROPERTY COVERAGE FORM
STANDARD PROPERTY COVERAGE FORM
PERSONAL PROPERTY OF OTHERS
COMPUTERS AND MEDIA COVERAGE**

A. Fungi, Bacteria or Virus Exclusions

1. Paragraph **A.5.i.(5)** of the Increased Cost of Construction Additional Coverage of the Standard Property Coverage Form is replaced by the following:

(5) Under this Additional Coverage, we will not pay for:

- (a)** The enforcement of any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling, or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungi", wet or dry rot, bacteria or virus; or
- (b)** Any costs associated with the enforcement of an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants", "fungi", wet or dry rot, bacteria or virus.

2. The following exclusion is added to Paragraph **B.1.** Exclusions of the Standard Property Coverage Form and the Special Property Coverage Form; Paragraph **F.**, Additional Exclusions of Computers and Media, form SS 04 41, and to form SS 04 45, Personal Property of Others:

i. "Fungi", Wet Rot, Dry Rot, Bacteria And Virus

We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss:

- (1)** Presence, growth, proliferation, spread or any activity of "fungi", wet rot, dry rot, bacteria or virus.
- (2)** But if "fungi", wet rot, dry rot, bacteria or virus results in a "specified cause of loss" to Covered Property, we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

- (1)** When "fungi", wet or dry rot, bacteria or virus results from fire or lightning; or
- (2)** To the extent that coverage is provided in the Additional Coverage – Limited Coverage for "Fungi", Wet Rot, Dry Rot, Bacteria and Virus with respect to loss or damage by a cause of loss other than fire or lightning.

This exclusion applies whether or not the loss event results in widespread damage or affects a substantial area.

- B.** The following Additional Coverage is added to Paragraph **A.4.** of the Standard Property Coverage Form or Paragraph **A.5.** of the Special Property Coverage Form, and applies to the optional coverage form SS 04 41, Computers and Media and SS 04 45, Personal Property of Others and form:

1. Limited Coverage For "Fungi", Wet Rot, Dry Rot, Bacteria and Virus

- a. The coverage described in **1.b.** below only applies when the "fungi", wet or dry rot, bacteria or virus is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.

- (1) A "specified cause of loss" other than fire or lightning;
- (2) Equipment Breakdown Accident occurs to Equipment Breakdown Property, if Equipment Breakdown applies to the affected premises.

- b. We will pay for loss or damage by "fungi", wet rot, dry rot, bacteria and virus. As used in this Limited Coverage, the term loss or damage means:

- (1) Direct physical loss or direct physical damage to Covered Property caused by "fungi", wet rot, dry rot, bacteria or virus, including the cost of removal of the "fungi", wet rot, dry rot, bacteria or virus;
- (2) The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungi", wet rot, dry rot, bacteria or virus; and
- (3) The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungi", wet rot, dry rot, bacteria or virus are present.

- c. Unless a higher Limit of Insurance is shown in the Declarations for Limited "Fungi", Bacteria or Virus Coverage, the coverage described under this Limited Coverage is no more than the Limit of Insurance stated in the Declarations for Building and Business Personal Property, but not greater than \$50,000.

If form SS 04 41, Computers and Media, and form SS 04 45, Personal Property of Others, are made a part of this policy, then the Limits of Insurance for Computers and Media, and Personal Property of Others is included within this coverage limit. This coverage is made applicable to separate "scheduled premises" as described in the Declarations. Regardless of the number of claims, this limit is the most we will pay per "scheduled premises" for the total of all loss or damage arising out of all

- (1) occurrences of "specified causes of loss" (other than fire or lightning); and
- (2) Equipment Breakdown Accident that occurs to Equipment Breakdown Property;

which take place in a 12-month period (starting with the beginning of the present annual policy period).

With respect to a particular occurrence of loss which results in "fungi", wet or dry rot, bacteria or virus, we will not pay more than the total of \$50,000 unless a higher Limit of Insurance is shown in the Declarations, even if the "fungi", wet or dry rot, bacteria, or virus continues to be present or active, or recurs, in a later policy period.

- d. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungi", wet rot, dry rot, bacteria or virus, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by "fungi", wet rot, dry rot, bacteria or virus, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungi", wet or dry rot, bacteria or virus causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

- e. The terms of this Limited Coverage do not increase or reduce the coverage for Water Damage provided under provision **B.1.h., Exclusion – Water Damage** of the Standard Property Coverage Form or Additional Coverage provision **A.5.n., Water Damage, Other Liquid, Powder or Molten Material Damage** of the Special Property Coverage Form.

- f. The following applies only if a Time Element Coverage applies to the "scheduled premises" and only if the suspension of "operations" satisfies all the terms and conditions of the applicable Time Element Coverage.

- (1) If the loss which resulted in "fungi", wet or dry rot, bacteria or virus does not in itself necessitate a suspension of "operations", but such suspension is necessary due to loss or damage to

property caused by "fungi", wet or dry rot, bacteria or virus, then our payment under the Time Element Coverage is limited to the amount of loss and expense sustained in a period of not more than 30 days unless another number of days is indicated in the Declarations. The days need not be consecutive. If a covered suspension of "operations" was caused by loss or damage other than "fungi", wet or dry rot, bacteria or virus, but remediation of "fungi", wet or dry rot, bacteria or virus prolongs the "period of restoration", we will pay for loss and expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days unless another number of days is indicated in the Declarations. The days need not be consecutive.

C. Fungi Definition

1. **"Fungi"** means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.

EXHIBIT “C”

[see attached Civil Remedy Notice]



Civil Remedy Notice of Insurer Violations

Filing Number: **487953**

Filing Accepted: **4/23/2020**

Warning! Information submitted as part of this civil remedy notice is a public record. Data entered into this form will be displayed on the DFS website for public review. Please DO NOT enter Social Security Numbers, personal medical information, personal financial information or any other information you do not want available for public review.

- ☒ The submitter hereby states that this notice is given in order to perfect the rights of the person(s) damaged to pursue civil remedies authorized by Section 624.155, Florida Statutes.

Complainant

Name: **FLORIDA WELLNESS CENTER OF TALLAHASSEE INC**
Street Address: **2339 N MONROE ST**
City, State Zip: **TALLAHASSEE, FL 32303**
Email Address:
Complainant Type: **Insured**

Insured

Name: **FLORIDA WELLNESS CENTER OF TALLAHASSEE INC**
Policy #: **21SBABX8049**
Claim #: **Y93F53172**

Attorney

Name: **ERIC FISCHER**
Street Address: **1200 N FEDERAL HWY, STE 200**
City, State Zip: **BOCA RATON, FL 33432**
Email Address: **ERIC@THELANDAULAWGROUP.COM**

Notice Against

Insurer Type: **Authorized Insurer**
Name: **HARTFORD CASUALTY INSURANCE COMPANY**
Street Address:
City, State Zip: ,

Please identify the person or persons representing the insurer who are most responsible for/knowledgeable of the facts giving rise to the allegations in this notice.

LEO HERRERA

Type of Insurance: **Commercial Property & Casualty**



Civil Remedy Notice of Insurer Violations

Filing Number: **487953**

Reason for Notice

Reasons for Notice:

Claim Denial

Unfair Trade Practice

Failure to Properly Investigate Claim and with Due Regard to Insured's Interest

PURSUANT TO SECTION 624.155, F.S. please indicate all statutory provisions alleged to have been violated.

- | | |
|-----------------------------|--|
| 624.155(1)(b)(1) | Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests. |
| 624.155(1)(b)(3) | Except as to liability coverages, failing to promptly settle claims, when the obligation to settle a claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage. |
| 626.9541(1)(i)(3)(a) | Failing to adopt and implement standards for the proper investigation of claims. |
| 626.9541(1)(i)(3)(b) | Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue. |
| 626.9541(1)(i)(3)(d) | Denying claims without conducting reasonable investigations based upon available information. |
| 626.9541(1)(i)(3)(i) | Unfair claim settlement practices |

Reference to specific policy language that is relevant to the violation, if any. If the person bringing the civil action is a third party claimant, she or he shall not be required to reference the specific policy language if the authorized insurer has not provided a copy of the policy to the third party claimant pursuant to written request.

Insurance Company's misapplication and misinterpretation of policy terms and conditions found in (but not limited to) the Policy "Definitions", the section of Conditions and the section of Additional Coverages, as well as the terms of the Special Provisions and Endorsements. In addition, the sections on Property Coverages, Perils Insured Against, and Conditions including Loss Settlement and Loss Payment. More specifically, the terms found in the following policy provisions:

A. COVERAGE

3. Covered Causes of Loss: Risks of direct physical loss.

5. Additional Coverages - o. Business Income and q. Civil Authority

B. EXCLUSIONS- 2.i. Pollution; and

The Limited Fungi, Bacteria or Virus Coverage endorsement (SS 40 93 07 05).

To enable the insurer to investigate and resolve your claim, describe the facts and circumstances giving rise to the insurer's violation as you understand them at this time.

The Insured purchased a commercial insurance policy (hereinafter the "Policy") from Insurer which provided coverage for loss of property, business income, acts of civil authority and other insurance coverage for their business. With the Policy in full force and effect, the business suffered damages from a covered peril as a result of the COVID-19 pandemic. This fatal and highly infectious virus has killed tens of thousands of people and caused global economic disaster. It has led governments to mandate that non-essential businesses shut-down and restricted people's movements by issuing stay-at-home orders. As result of the viruses propensity to spread via direct human contact with infected persons and via contaminated surfaces, the Insured's business has been severely and adversely affected. The Insured has suffered business income losses and other damages which led them to file a claim under the Policy. The Insurer acknowledged receipt of the claim, assigned it a claim number (hereinafter the "Claim") and promptly denied the Claim without conducting a reasonable investigation. The basic premise of the Insurer's denial rests upon the presumption that a virus cannot cause direct physical loss to property or even if it could, then a virus is not a covered cause of loss. In both such cases, the Insured is incorrect, and they wrongfully and intentionally misinterpreted the language of the Policy to the detriment of the Insured. The Policy does not contain an applicable exclusion for damage caused by a virus, nor does it state that the physical damage loss or damage has to structurally alter the property. In fact, the policy language itself contemplates that the loss does not require physical damage because it states it can be either "loss or damage". This distinction is clear throughout the policy and there can be no explanation other than the Insurer acknowledging that the Insured can suffer a loss of property without damage.

Despite the fact that this matter has now become a matter of great public importance, the Insurer sent a generic denial letter without conducting an investigation or looking at the exact language of the Policy. The Insurer has refused to provide coverage and tender insurance proceeds to the Insured as required by the Policy and law. The Insurer has breached its statutory and contractual responsibilities by its refusal and/or failure to settle the Insured's claim when under all the circumstances it could have and should have done so had it acted fairly and honestly towards the Insured. The actions taken by the Insurer in the handling/adjustment of the Insured's claim were willful, wanton, and in disregard for the rights of its Insured. In fact, the use of the generic denial letter and attachment indicates that this is their general business practice to the detriment of its Insureds in order to increase financial profits for themselves. It is clear that the insurer is not treating the Insured with good faith claims conduct; failing to pay the full value of a claim clearly owed; not adjusting the claim and evaluating the loss properly, promptly and fairly to provide full and prompt indemnity to the Insured; failing to implement proper standards for the adjustment and investigation of claims; placing the company's interests before the Insured's interests; refusing to pay the full amount owed to the Insured despite the fact that the damages are covered under the policy.

Therefore, to cure the defects outlined in this Civil Remedy Notice, the Insurer must (1) Tender all insurance proceeds due and owing to the Insured; (2) Pay statutory interest on the amount of unpaid contract damages from the date of the loss to the present time pursuant to F.S. §627.70131, (3) Pay Insured's reasonable attorney's fees and costs incurred; (4) Tender additional payment to the insured for all consequential damages resulting from Insurance Company's bad faith actions as determined by Florida law. All of the foregoing must be done timely to avoid/limit any additional delays, costs, and prejudice that Insurer's conduct has caused and continues to cause the Insured. Complainant reserves all rights and remedies at law or in equity and nothing stated herein is intended to waive any such rights or remedies. Nor is this list intended to imply that no other actions were taken by the Insurer that could be deemed a violation of law and failing to list them here shall not preclude the Insured from raising it at a later time. The Insurer or their agent should contact counsel for the Insured to obtain an up-to-date payment amount necessary to cure these violations.

Complainant requests relief under all Florida Statutes cited in this CRN. Pursuant to Section 624.155(3)(b)5, this notice is given in order to perfect the Insured's right to pursue all civil remedies authorized by this section and Florida Law.

A COPY OF THIS FORM SUBMITTED TO THE FDFS HAS BEEN ELECTRONICALLY SENT TO THE FOLLOWING PARTY PROVIDING THEM NOTICE OF THE FILING OF THE CIVIL REMEDY NOTICE:
leonel.herrera@thehartford.com

Comments

User Id	Date Added	Comment