

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

**GRAILEYS, INC. d/b/a GRAILEYS FINE
WINES,**

Plaintiff,

v.

**THE HARTFORD FIRE INSURANCE
COMPANY and SENTINEL
INSURANCE COMPANY, LTD.,**

Defendants.

Civil Action No. 3:20-cv-1181

COMPLAINT AND JURY
DEMAND

PLAINTIFF’S ORIGINAL COMPLAINT

I. INTRODUCTION

1. Plaintiff, Graileys, Inc. d/b/a Graileys Fine Wines (“Graileys”), files this complaint against Defendants, The Hartford Fire Insurance Company (“the Hartford”) and Sentinel Insurance Company, Ltd. (“Sentinel”), for their denial of benefits for the business interruption sustained by Graileys as a result of orders issued by Dallas County and the City of Dallas. These orders closed all private clubs in the County and within the City’s limits. Graileys is an exclusive wine club that provides an inviting and comfortable space for private members to taste wines from Graileys’ inventory or from their own collections, and its business was closed by the “Stay Home Stay Safe” orders. Despite the extensive interruption of Graileys’ business, the Hartford summarily denied its claim while the “Stay Home Stay Safe” order was still in place.

II. PARTIES

2. Plaintiff, Graileys, Inc. d/b/a Graileys Fine Wines (“Graileys”), is a corporation organized under the laws of Texas with its principal place of business at 1544 Edison Street, Dallas,

Texas 75207, Dallas County, Texas. Plaintiff Graileys is authorized to do business in the State of Texas.

3. Defendant, The Hartford Fire Insurance Company, is a corporation organized under the laws of Connecticut, with its principal place of business at One Hartford Plaza, Hartford, Connecticut 06155. Citation may be served through its registered agent for service of process at CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 78201-3136.

4. Defendant, Sentinel Insurance Company, Ltd., is a limited corporation organized under the laws of Connecticut, with its principal place of business at One Hartford Plaza, Hartford, Connecticut 06155. Citation may be served through its registered agent for service of process at CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 78201-3136.

5. At all times herein, Defendants acted by and through their duly authorized agents and servants, each acting within the course and scope of his or her employment.

III. JURISDICTION AND VENUE

6. Venue is proper in the Northern District of Texas pursuant 28 U.S.C.A. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in the Northern District of Texas and the insured premises that is the subject of the action is situated in the Northern District of Texas.

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) because the amount in controversy is greater than \$75,000 and plaintiff and defendant are citizens of different states.

8. This Court has specific jurisdiction over Defendant as its activities were directed toward Texas and injuries complained of resulted from their activities in Texas. Defendant has a substantial connection with Texas and the requisite minimum contacts with Texas necessary to constitutionally permit the Court to exercise jurisdiction.

IV. FACTUAL ALLEGATIONS

A. Plaintiff Graileys Obtains Insurance Coverage for Its Business from Defendants.

9. Plaintiff Graileys is an exclusive wine club in Dallas, Texas. It provides an inviting and comfortable space for private members to taste wines from Graileys' inventory or from their own collections and provides food only as part of wine tastings and events on site. It is owned by Simon Roberts and is located near the center of Dallas County.

10. Defendants issued commercial policy number 46 SBA AE 2254 SC to Graileys, for the policy period of December 5, 2019 to December 5, 2020 (the "Policy") for the property located at 1544 Edison St., Dallas TX 75207, 1531 Edison St., Dallas TX 75207 ("Insured Premises"). This policy is attached hereto as Exhibit A. Graileys has performed all of its obligations under the Policy, including faithfully paying policy premiums.

B. The Coronavirus 2019 Global Pandemic Causes Damage, Including in Dallas County.

11. The Coronavirus disease was first detected toward the end of 2019, emerging in Wuhan, China. The World Health Organization proposed the nomenclature COVID-19, standing for coronavirus disease 2019.¹

12. On January 30, 2020, the World Health Organization declared the virus a public health emergency of international concern. In February 2020, coronavirus deaths began to be reported outside of China. Throughout February 2020, Coronavirus infections were reported in a growing number of locations around the world, including in the Philippines, Japan, Europe, South Korea, Iran, Latin America, Sub-Saharan Africa, and the United States.

¹ Cf. [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it). As used in this Petition, the term "Coronavirus" refers to the virus termed as Coronavirus disease 2019 (COVID-19), including without limitation the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), and the term is used broadly, and references the global pandemic associated with the virus first detected in December 2019 in Wuhan, China.

13. On March 11, 2020, the World Health Organization characterized the Coronavirus (COVID-19) as a pandemic. On March 13, 2020, a national emergency was declared in the United States of America. On March 15, 2020, the United States Centers for Disease Control and Prevention advised no gatherings of 50 or more people in the United States. The next day, the President advised citizens to avoid groups of more than 10.

14. The Coronavirus has caused tens of thousands of deaths throughout the United States, with the death toll increasing every day, and the numbers of reported cases growing exponentially. The economy has been devastated by business interruptions in Dallas County, the State of Texas, the United States, and worldwide.

15. Coronavirus cases in Texas spiked in March 2020, and a growing number of municipalities issued quarantine directives. The numbers of reported Coronavirus cases have spread throughout Texas Counties, curtailing business, social, and economic activities throughout the State. Correspondingly, the entire nation experienced spikes in infections and deaths, with a growing number of citizens subjected to quarantine orders and business shutdowns.

16. The scientific community recognizes the Coronavirus as a cause of real physical loss and damage.

17. The Coronavirus is physically impacting public and private property, and physical spaces in communities around the world.

18. The global pandemic is exacerbated by the fact that the potentially deadly virus physically infects and stays on the surface of objects or materials for weeks. The duration of the virus' lethal staying power, and the conditions upon which the virus can continue to propagate and infect people, are known facts under continued scrutiny by the scientific community. The virus can physically infect and stay on surfaces for weeks, up to twenty-eight days under some estimates.

Moreover, because of the ongoing Coronavirus pandemic, which is raging in Dallas County, a significant component of the public health crisis is the risk of continued contamination of the surface of objects and materials which could propagate infections. Therefore, the Coronavirus has caused damage, including damage to property, as a result of the staying power of the virus and the communicability of disease from exposure to the surface of objects and materials.

19. For example, China, Italy, France, and Spain have implemented the cleaning and fumigating of public areas prior to allowing them to re-open publicly due to the intrusion of microbials.

20. The physical contamination of surfaces with communicable Coronavirus is a well-recognized cause of physical damage and a reason that civil authorities have issued quarantine orders.

C. The Civil Authorities Closed Plaintiff's Business, Causing a Cessation of Business Activity.

21. On March 19, 2020, Texas Governor Greg Abbott issued Executive Order No. GA-08 relating to COVID-19 preparedness and mitigation, which prohibited certain business activities in order to contain the Coronavirus.

22. Also on March 19, 2020, John W. Hellerstedt, M.D., the Commissioner of the Texas Department of State Health Services, in accordance with Section 81.082(d) of the Texas Health and Safety Code, declared a state of public health disaster for the entire State of Texas for the first time since 1901.

23. In March and April 2020, the Dallas County Commissioners Court issued disaster declarations and executive orders, commanding that individuals SHELTER IN PLACE, as a result of the Coronavirus. Dallas County officials first issued a disaster declaration related to the COVID-

19 pandemic on March 12, 2020. On March 16, 2020, Dallas County Judge Clay Jenkins issued an order that went into effect at 11:59 pm on March 16, 2020.

24. This order closed all private clubs, as well as bars, taverns, dine-in service in restaurants, theaters, and all public events in Dallas County. The March 16, 2020 order is attached as Exhibit B.

25. While the order was initially in effect until March 20, 2020, it was extended. And on March 22, 2020, Dallas County entered its “Stay Home, Stay Safe” order, which incorporated the closing of private clubs and other businesses and has been repeatedly extended.

26. On March 24, 2020, the City of Dallas adopted Dallas County’s “Stay Home Stay Safe” order.

27. Thus, by executive order of Dallas County, all private clubs, which includes the insured premises, were required to close on March 16, 2020.

28. A cause of civil authorities’ closure of businesses, including Plaintiff’s, is the contamination of property outside of the insured premises with the Coronavirus.

D. The Policy Covers Plaintiff’s Damage and Losses Sustained and Costs and Expenses Incurred.

29. The damage and loss sustained by Graileys as a result of the Coronavirus are covered by the policy (Exhibit A) issued by Defendants to Plaintiff, and no exclusions or defenses alleviate Defendants’ obligation to Plaintiff under the policy.

30. Contamination, and potential contamination, of the insured premises by the Coronavirus constitutes a direct physical loss needing remediation to clean the surfaces of, and the surfaces of objects at, the establishment.

31. The policy promises to “pay for direct physical loss of or physical damage to Covered Property at the premises.” Exhibit A, SS 00 07 07 05, Page 1 of 25 ¶A.

32. Graileys has sustained direct physical loss and/or damage to property arising from and/or related to the Coronavirus, Coronavirus contamination, the threat of Coronavirus contamination, and/or the Civil Authority response related to the Coronavirus.

33. The Policy promises to “pay for the actual loss of Business Income . . . sustain[ed] due to the necessary suspension of your ‘operations[.]’” Exhibit A, SS 00 07 07 05, Page 10 of 25 ¶A.5.o.(1).

34. The Policy promises to pay for additional coverages, including Civil Authority coverage for loss of business income sustained when access to the Insured Premises was prohibited by order of civil authority. Exhibit A, SS 00 07 07 05, Page 11 of 25 ¶A.5.q.

35. Graileys has sustained a suspension of its private member wine-tasting business as a result of the Coronavirus.

36. Graileys has sustained loss of income and incurred expenses as a result of civil authorities prohibiting access to the insured premises.

37. The commercial, business, and property losses and damages, business interruption, income losses sustained, and costs and expenses incurred, as a result of the Coronavirus and the civil authority response to the Coronavirus, are covered by the policy. Defendants owe Plaintiff compensation for Grailey’s damages, losses, costs, and expenses arising from and related to the Coronavirus, Coronavirus contamination, the threat of Coronavirus contamination, and/or the Civil Authority response related to the Coronavirus.

E. Defendants Denied Plaintiff’s Claim.

38. In compliance with the prerequisites for coverage, including the notice prerequisites, Graileys submitted a claim for coverage for the damage and losses sustained and

costs and expenses incurred as a result of the Coronavirus, as more fully discussed herein, fulfilling all notice provisions in the policy.

39. The claim Plaintiff submitted to Defendants under the policy was summarily denied without any meaningful investigation.

40. The letter from the Hartford, dated May 4, 2020, offered the following reason for denying the claim: “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.” *See* Letter from the Hartford, dated May 4, 2020, attached as Exhibit C.

41. The reason Defendants’ letter proffers for denying coverage is inaccurate, and is denied by Plaintiff.

V. CAUSES OF ACTION

COUNT ONE

Breach of Contract

42. Plaintiff restates and incorporates all the paragraphs above into this claim for relief as if fully set forth herein.

43. Plaintiff entered into a contract with Defendants for insurance coverage, including coverage for Business Income, Extra Expense and Civil Authority.

44. Plaintiff suffered property damage and loss of business income and extra expenses covered by the Policy.

45. Defendants breached their contract with Plaintiff by denying coverage and denying Plaintiff’s claim.

46. Plaintiff has been damaged by the breach, at a minimum, in the amount of the unpaid insurance proceeds.

47. All conditions precedents that are material to coverage for Plaintiff's claim have been performed.

COUNT TWO

Violation of the Texas Insurance Code §541.060

48. Plaintiff restates and incorporates all the paragraphs above into this claim for relief as if fully set forth herein.

49. Defendants misrepresented a material fact and policy provision relating to the coverage at issue in violation of Tex. Ins. Code §541.060(a)(1). Namely, despite its knowledge that the Graileys' property was contaminated by the virus and Grailey sustained business income loss as a result, the Hartford stated that there was no covered loss to the Insured Premises.

50. Defendants failed at all material times to effectuate a prompt, fair and equitable settlement of Plaintiff's claim, after its liability had become reasonably clear, in violation of Tex. Ins. Code § 541.060(a)(2)(4). Defendants' liability became reasonably clear when it had notice of the widespread contamination of property by the coronavirus and issuance of executive orders prohibiting certain business activities. Instead of promptly investigating and paying Graileys' claim, Defendants summarily denied the claim.

51. Defendants violated Tex. Ins. Code §541.060(a)(7) by refusing to pay Graileys' claim without conducting a reasonable investigation or any analysis with respect to the claim. Defendants conducted no investigation as to Graileys' business income loss before they denied the claim.

52. Defendants' violations were done knowingly.

53. Plaintiff is entitled to actual damages as well as any and all consequential damages, statutory penalties, and punitive damages as provided by law.

COUNT THREE

Breach of the Duty of Good Faith and Fair Dealing

54. Plaintiff restates and incorporates all the paragraphs above into this claim for relief as if fully set forth herein.

55. Defendants owe Plaintiff a duty of good faith and fair dealing in connection with the investigation and resolution of claims under the Policy.

56. Such duty obligated Defendants to not deny liability to Plaintiff when their liability under the policy was reasonably clear.

57. Defendants' liability was reasonably clear when they had notice of the widespread contamination of property by the coronavirus and issuance of executive orders prohibiting certain business activities.

58. Defendants violated and continue to violate their duty of good faith and fair dealing by denying liability to Plaintiff under the Policy and continuing to refuse to pay Plaintiff the sums due and owing to Plaintiff under the policy.

59. Defendants' acts and omissions constituting a breach of the duty of good faith and fair dealing were and continue to be committed with actual awareness that they are wrongful and that they are inflicting harm on Plaintiff. Defendants' violation of the duty of good faith and fair dealing is grossly negligent, malicious, and/or fraudulent. Defendants' violation of the duty of good faith and fair dealing, therefore, warrants and authorizes the imposition of punitive or exemplary damages.

60. Plaintiff has suffered and will continue to suffer actual damages as a result of Defendants' breach of the duty of good faith and fair dealing.

COUNT FOUR

Declaratory Judgment Action

61. Plaintiff restates and incorporates all the paragraphs above into this claim for relief as if fully set forth herein.

62. Pursuant to Texas Civil Practice and Remedies Code Sections 37.001, *et seq.*, the Court may declare rights, status, and legal relations whether or not further relief is or could be claimed, and before or after breach of contract.

63. Plaintiff Graileys seeks a judgment declaring that the Policy provides coverage to Graileys for: (1) the damage to the Insured Premises by the Coronavirus; (2) business income loss and extra expenses resulting from the interruption of Graileys' operation due to the damage to the Insured Premises by the Coronavirus; and (3) the business income loss and extra expenses Graileys sustained as result of Graileys' inability to access and use the Insured Premises due to executive orders and other actions taken by civil authorities.

64. Plaintiff also seeks a declaratory judgment that it has fulfilled any and all preconditions, notices, and duties owed to Defendants under the Policy.

COUNT FIVE

Costs Under Civil Practice and Remedies Code Section Chapters 37 and 38

65. Plaintiff restates and incorporates all the paragraphs above into this claim for relief as if fully set forth herein.

66. Plaintiff is entitled to recover costs and reasonable and necessary attorney fees that are equitable and just under Texas Civil Practice and Remedies Code Section 37.009, because this is a suit for declaratory relief. Plaintiff is also entitled to recover its costs and reasonable attorney's

fees under Texas Civil Practice and Remedies Code Section 38.001 and all applicable provisions of the Texas Insurance Code.

VI. CONDITIONS PRECEDENT

67. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

VII. REQUESTED RELIEF

68. For these reasons Plaintiff Graileys, Inc. asks that the Court render judgment: (1) declaring that the policy issued by Defendants provides coverage for Plaintiff's property loss as a result of coronavirus pandemic, and the business income loss and extra expenses Plaintiff sustained due to the property loss and the actions taken by civil authorities as requested herein, and (2) awarding Plaintiff the following damages:

- a. Actual damages for the full amount of property loss, business income loss and extra expenses sustained by Graileys as a result of the Coronavirus and actions taken by civil authorities;
- b. Actual damages of all amounts owed under the contract;
- c. Treble damages under Texas law;
- d. Attorneys' fees and costs pursuant to Texas Civil Practice and Remedies Code Sections 37.009 and 38.001, Texas Insurance Code Section 542.60, and Texas Insurance Code Chapter 542A;
- e. Penalties as provided by Sections 542.058(a) and 542.060(a) of the Texas Insurance Code;

- f. Actual damages caused by the Defendants' wrongful conducts, including but not limited to the benefits wrongfully withheld and attorneys' fees and court costs.
- g. Exemplary damages; and
- h. Pre- and post-judgment interest to the extent permitted by law.

Dated: May 8, 2020

JURY TRIAL DEMANDED

Respectfully submitted,

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