

IN THE CIRCUIT COURT OF THE 17TH  
JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

CASE NO:

TWO FRIENDS, INC. D/B/A SOUTHPORT  
RAW BAR & RESTAURANT

Plaintiff,

v.

CERTAIN UNDERWRITERS AT  
LLOYD'S LONDON SUBSCRIBING TO  
CERTIFICATE NUMBER WPB139508

Defendant,

/

**PETITION FOR DECLARATORY RELIEF**

COMES NOW, Plaintiff, TWO FRIENDS, INC. D/B/A SOUTHPORT RAW BAR & RESTAURANT (hereinafter "Plaintiff"), by and through the undersigned attorneys, brings this action against the Defendant, CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO CERTIFICATE NUMBER WPB139508 (hereinafter "Defendant"), and alleges the following:

**JURISDICTION, VENUE, AND PARTIES**

1. This is an action for declaratory relief brought pursuant to Fla. Stat. § 86.011 with an amount in controversy in excess of \$30,000.00, but less than \$75,000.00, exclusive of interest, costs, and attorney fees.
2. The subject Policy of insurance involved herein was issued by the Defendant to Plaintiff in Broward County, Florida, and covers real property located in Broward County, Florida.

Additionally, the cause of action arose in Broward County, Florida. As such, venue is proper in Broward County, Florida, pursuant to Fla. Stat. § 47.051.

3. At all material times relevant to this Complaint, Plaintiff has owned and operated Southport Raw Bar & Restaurant, the oldest raw bar in Fort Lauderdale known for its fresh seafood and dock side view, located at 1536 Cordova Road, Fort Lauderdale, FL 33316 (hereinafter the "Subject Property"), and is otherwise *sui juris*.

4. Defendant has been and is now a corporate body governed by the Lloyd's Act of 1871 and Acts of the Parliament of the United Kingdom operating as a partially-mutualized insurance marketplace in which groups of financial backers known as "Syndicates" underwrite insurance policies governed by Chapter 626, Florida Statutes, is authorized to insure all properties located in the State of Florida including properties located in Broward County, Florida, and is otherwise *sui juris*.

### **THE INSURANCE POLICY**

5. In consideration for the premiums paid to it, Defendant issued Plaintiff a valid, binding, and enforceable policy of insurance bearing Policy Number WPB139508 (hereinafter the "Subject Policy") that insured the Subject Property between the effective dates of coverage listed on the declarations page of the Subject Policy. A true and correct copy of the Subject Policy is attached hereto and incorporated herein as **Exhibit "A."**

6. The Subject Policy is an "all risk" policy that covers all direct physical losses to the Subject Property that are not otherwise expressly excluded.

7. The Subject Policy was and is effective between the dates of January 19, 2020, and January 19, 2021.

8.

## **THE CORONAVIRUS PANDEMIC**

9. “Coronaviruses are a family of viruses that can cause illnesses such as the common cold, severe acute respiratory syndrome (SARS) and Middle East respiratory syndrome (MERS). In 2019, a new coronavirus was identified as the cause of a disease outbreak that originated in China” designated as SARS-CoV-2 also known as the 2019 Novel Corona Virus or COVID-19 (hereinafter “COVID-19”).<sup>1</sup>

10. On March 9, 2020, Florida Governor Ron DeSantis, on the recommendations of the Centers for Disease Control and Prevention (“CDC”), the State Surgeon General, and the State Health Officer, declared that a State of Emergency exists in Florida as a result of the COVID-19 outbreak.<sup>2</sup>

11. On March 10, 2020, Broward County issued a Declaration of Emergency due to the presence of COVID-19 posing “a clear and present threat to the health and welfare of the people of Broward County.”<sup>3</sup>

12. On March 11, 2020, the World Health Organization announced that, due to “the alarming levels of spread and severity,” the COVID-19 outbreak rose to the level of a pandemic.<sup>4</sup>

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<sup>1</sup> Mayo Clinic, Coronavirus Disease 2019 (COVID-19), <https://www.mayoclinic.org/diseases-conditions/coronavirus/symptoms-causes/syc-20479963>.

<sup>2</sup> Office of the Governor of Florida, Executive Order Number 20-52 (March 9, 2020), [https://www.flgov.com/wp-content/uploads/orders/2020/eo\\_20-52.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/eo_20-52.pdf).

<sup>3</sup> Bertha Henry, Broward County Administrator, Declaration of Emergency (March 10, 2020), <https://www.broward.org/coronavirus/documents/declaration-of-emergency-1.pdf>.

<sup>4</sup> World Health Organization, WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19 (March 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>



13. On March 13, 2020, President Donald J. Trump declared that the "COVID-19 outbreak constitutes a national emergency" and applied same retroactively to March 1, 2020.<sup>5</sup>

14. On March 22, 2020, Broward County issued Emergency Order 20-01 ordering the closure of all nonessential retail and commercial businesses due to "the propensity of [COVID-19] to spread person to person and also because the virus is physically causing property damage due to its proclivity to attach to surfaces for prolonged periods of time."<sup>6</sup>

### **THE CLAIM**

15. On or about March 9, 2020, COVID-19 caused direct physical loss and resultant/ensuing damages to the Subject Property (hereinafter the "Loss").

16. Additionally, as a result of the Loss, Plaintiff sustained a loss of business income.

17. To compound issues, the closure of all nonessential retail and commercial businesses as mandated in Broward County Emergency Order 20-01 caused additional lost business income.

18. Direct, resultant, and/or ensuing damages and/or loss of business income caused by the COVID-19 pandemic and Emergency Order 20-01 are covered under the Subject Policy.

19. Direct, resultant, and/or ensuing damages and/or loss of business income caused by the COVID-19 pandemic and Emergency Order 20-01 are not excluded from the Subject Policy.

20. Plaintiff timely notified Defendant of the Loss.

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<sup>5</sup> President Donald J. Trump, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (March 13, 2020) <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

<sup>6</sup> Bertha Henry, Broward County Administrator, Emergency Order 20-01 (March 22, 2020), <https://www.broward.org/coronavirus/documents/berthahenryexecutiveorder20-01.pdf>.

21. Defendant responded to the Loss by opening claim number 22094499 (hereinafter the "Claim").

22. Through its adjustment of the Claim, Defendant has been afforded the opportunity to fully adjust the Loss, including conducting a recorded statement wherein all questions were answered in full leaving no remaining requests for compliance outstanding.

23. Despite demanding a coverage determination, Defendant has failed to communicate their position regarding same.

24. Plaintiff has complied with all prerequisites, whether denominated conditions precedent, duties after loss, or otherwise, to receive benefits or proceeds under the Subject Policy, or maintain the instant suit for the breach or declaration of the Subject Policy; alternatively, Defendant has waived or never had standing to assert any prerequisites, whether denominated as conditions precedent, duties after loss, or otherwise.

#### **COUNT I – DECLARATORY RELIEF**

25. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 23 as if fully set forth herein and further state:

26. This is an action for declaratory relief brought pursuant to Fla. Stat. § 86.011.

27. Plaintiff has requested a coverage determination to no avail.

28. As such, Plaintiff is in doubt as to its rights under the Subject Policy and whether Defendant may withhold a coverage determination in perpetuity.

29. Defendant's actions and positions taken demonstrate an actual, present practical need for declaration from this Honorable Court.

30. Plaintiff is entitled to have this Honorable Court remove all doubts raised by Defendant concerning the application of the facts of the Claim to the Subject Policy.

31. The declaration of these rights will address and resolve the dispute between Plaintiff and Defendant in order to allow the adjustment of the claim to be finalized.

32. As a result of this dispute, it has become necessary that Plaintiff retain the services of the undersigned attorneys. Plaintiff is obligated to pay a reasonable fee for the undersigned attorneys' services in bringing this action plus costs. Plaintiff is entitled to reimbursement of these fees and costs by the Defendant subject to Section 626.9373, Florida Statutes.

33. Should Plaintiff prevail in this action, Plaintiff shall be entitled to interest as prescribed by Florida law.

**WHEREFORE**, Plaintiff respectfully requests this Honorable Court to:

- A. Take jurisdiction of the subject matter and parties thereto;
- B. Determine applicable laws that apply to the Subject Policy;
- C. Declare each policy provision not in conformity with the governing law be amended and reformed to comply with same;
- D. Declare that any ambiguities in the Subject Policy be construed in favor of Plaintiff;
- E. Declare that policy provisions be construed strictly and most strongly against the insurer, and liberally in favor of the insured, so as to affect the dominant purpose of indemnity or payment as outlined in the Subject Policy;
- F. Declare that Defendant may not withhold a coverage determination in perpetuity;
- G. Declare that the Plaintiff is entitled to a claim for attorneys' fees and costs against Defendant, and to determine the amount of such fees and costs to be paid to the Plaintiff inclusive of a contingency fee multiplier; and
- H. Determine and declare any other material matters pertaining to the respective rights and responsibilities under the Policy, as needed to do complete justice in this case.

**DEMAND FOR JURY TRIAL**

Plaintiff, TWO FRIENDS, INC. D/B/A SOUTHPORT RAW BAR & RESTAURANT,  
demands a trial by jury on all issues so triable.



**NOTICE OF DESIGNATION OF EMAIL ADDRESS**  
**PURSUANT TO 2.516, FLA. R. JUD. ADMIN.**

Plaintiff, TWO FRIENDS, INC. D/B/A SOUTHPORT RAW BAR & RESTAURANT, by and through the undersigned counsel, and pursuant to Rule 2.516, Fla. R. Jud. Admin., hereby designates the following e-mail address for the purpose of service of all documents required to be served in this proceeding:

**Primary E-Mail Address:** pleadings@cassel.law

Respectfully submitted this day, July 28, 2020.

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