

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

CASE NO.

B&G, P.T.L ENTERPRISES, INC,
a Florida corporation,

Plaintiff,

v.

DEPOSITORS INSURANCE COMPANY,
an Iowa corporation,

Defendant.

COMPLAINT

Plaintiff, B&G, P.T.L. Enterprises, Inc. sues Defendant Depositors Insurance Company
("Depositors") and states:

JURISDICTION, PARTIES AND VENUE

1. This is a civil action for breach of an insurance contract, costs, and attorneys' fees in excess of Thirty Thousand Dollars (\$30,000.00).
2. Plaintiff B&G, P.T.L. Enterprises, Inc. is a Florida corporation located in Pompano Beach, Florida and wholesale distributor of perishable and non-perishable goods to the travel and leisure industry, including hotels, airports, cruise lines and attractions where people gather such as zoos and other entertainment venues.
3. Depositors is an Iowa insurance company authorized to conduct business in Florida.
4. Venue lies in Broward County, Florida pursuant to Fla. Stat. § 47.051 because Depositors has agents in Broward County, this is where the cause of action accrued, and where the property in litigation is located. *See also* Fla. Stat. § 47.011; Fla. Stat. § 47.041.

5. This Court has personal jurisdiction over Depositors pursuant to Fla. Stat. § 48.193(1)(a) because Plaintiff's claim arises out of Depositors conducting, engaging in and carrying on business in Florida; Depositors' agents and brokers have offices in Florida; Depositors breached an insurance contract in Florida by failing to perform its contractual obligations that the insurance contract requires to be performed in Florida; and Depositors contracted to insure Plaintiff's business located in Florida at issue in this action.

6. All conditions precedent to this action have occurred, have been performed or have been waived.

FACTS

A. Background

7. People and businesses buy insurance to help themselves when disaster occurs.

8. People and businesses know that they are at their most vulnerable and desperate condition in the wake of disasters like the current pandemic. Insurance companies know it too.

9. Unlike most other types of commercial contracts, the insurance contract contains mutual obligations.

10. The insurance company, including Defendant herein, promises that it will provide money when most needed after a covered loss in the event of a disaster.

11. The insurance company, including Defendant herein, promises, warrants and sells "peace of mind" that in the unlikely event of a catastrophe or disaster such as a pandemic the policy holder will be fully and promptly indemnified.

12. For years and even decades, the vast majority of people and businesses that carry business interruption insurance have faithfully paid their premiums and have never made a claim. Now that there is a catastrophic business interruption caused by a national health pandemic and

government-ordered business shutdowns, their claims are denied. Like Plaintiff, many people and businesses are relying on their business interruption insurance to cover what it is supposed to cover – loss of income and ongoing expenses – to get through this crisis and rebuild their businesses.

13. Plaintiff, like any business, is about commerce that includes hiring employees, contracting with suppliers and selling to customers. The business counts on current income and future income from operations to remain operational, and insurance coverage when operations are suspended due to disasters.

14. Policyholders are dependent on performance by the insurance company when they are most vulnerable. Dependence here arises from the policyholders' financial desperation combined with a state of mind focused on managing the fallout from the disaster.

15. When the insurance company fails to fulfill its obligations timely and completely, the policyholder suffers contractual damages and harm to the existence of its business.

16. In order to protect its business and its income from losses, Plaintiff obtained an insurance policy (the "Policy") issued by Depositors.

17. Plaintiff purchased this businessowners coverage policy, with policy number ACPBPWD3056745285, effective July 22, 2019.¹ See Exhibit A. The Policy protects against, among other risks, business income losses and extra expenses that result from an involuntary interruption of business operations.

18. The Policy period runs until July 22, 2020 and insures Plaintiff's commercial properties and business operations, the wholesale distribution of perishable and non-perishable goods sold to the travel and leisure industry, including hotels, airports and entertainment venues.

¹ Plaintiff is the first named insured under the Policy and seeks damages for all related named insureds.

The Policy is in full effect as Plaintiff has faithfully paid the premiums due which Defendant accepted.

19. The Policy is a contract whereby Plaintiff agreed to pay monthly premiums in exchange for Defendant's promises of coverage for losses, including losses due to the involuntary interruption of its commercial output and business earning from dependent locations such as customers who purchase Plaintiff's products.

20. Beginning in March 2020, Plaintiff was forced to suspend business operations as a result of the national healthcare crisis and national emergency proclaimed to deal with the strain placed on the nation's healthcare system from the COVID-19 pandemic and resultant civil authority orders, which closed non-essential businesses and prohibited access to the hotels and other businesses who purchase Plaintiff's products in order to prevent the customers of those businesses from becoming endangered by contact with other people. This ongoing suspension has caused Plaintiff to suffer significant business income losses and to incur significant expenses.

21. Specifically, Defendant is in breach by refusing coverage for the suspension of business that resulted from the national COVID-19 pandemic disaster. Defendant is obligated under the Policy to cover and pay these losses and expenses but has refused to do so.

B. Relevant Policy Provisions

22. The Policy is an all-risk commercial businessowners insurance policy that provides coverage for physical loss of the insured business income from all risks unless expressly excluded by language in the body of the Policy or through a separate exclusion endorsement. There is no exclusion in Plaintiff's Policy for business interruption caused by a natural disaster and the declaration of a national emergency and urgent lock down of non-essential businesses and hotels and other travel and leisure venues and at-home quarantine of the

vast majority of the national population due to a global pandemic and need to lessen the strain on the nation's healthcare system by restricting access to places where the population can be exposed to this physically dangerous condition.

23. The Policy describes Plaintiff's property as "business income" for which it will pay for direct physical loss caused by or resulting from any cause of loss not excluded.

24. The business income coverage provides that Defendant will pay for the actual loss of business income Plaintiff sustains due to the necessary suspension of its operations during a period of restoration which ends when business operations return to normal. *Id.* at 30-31.

25. The Policy defines operations as Plaintiff's usual business operations occurring at the covered locations. *Id.* at 64.

26. The Policy defines business income as net income that would have been earned or incurred" if no physical loss had occurred. *Id.* at 62.

27. The Policy also provides for coverage for extended business income where the necessary suspension of operations produces a business income loss up to the time normal business operations resume. *Id.* at 31.

28. The Policy includes coverage for extra expense, providing that Defendant will pay the necessary expenses Plaintiff incurs that it would not have incurred if there had been no direct physical loss of the earnings. *Id.* at 31.

29. The Policy includes coverage for actions of Civil Authority, providing that Defendant will pay for the actual loss of business income and incurred extra expenses at the premises caused by the action of civil authority that prohibits access to Plaintiff's premises or a dependent location by order of a civil authority in response to dangerous physical conditions. *Id.* at 32, 38.

C. Plaintiff Has Suffered and Continues to Suffer a Loss Under the Policy

30. On March 9, 2020 Governor Ron DeSantis issued Executive Order 20-52 concerning the public health emergency posed by the COVID-19 pandemic, citing his authority to declare a state of emergency under Chapter 267 (1)(a), Florida Statutes which is intended to provide emergency measures to protect residents from disasters that threaten life, health and safety and damage to property.

31. On March 13, 2020, President Donald Trump declared a national state of emergency over the COVID-19 pandemic, effective March 1, 2020, wherein he directed that “hospitals and medical facilities throughout the country assess their preparedness posture and be prepared to surge capacity and capability.”

32. On March 20, 2020 Governor DeSantis issued Executive Order 20-70, relating to the COVID-19 pandemic, closing restaurants in Broward County and certain other South Florida counties (other than for deliveries and takeout), bars, taverns, pubs, night clubs, banquet halls, cocktail lounges, cafeterias, movie theaters, concert houses, auditoriums, playhouses, bowling alleys, arcades, gymnasiums, and fitness studios.

33. Following the proclamation of state and national emergencies, Broward County Administrator Bertha Henry issued a series of Emergency Orders from March 22, 2020 to April 28, 2020 (Emergency Orders 20-01 to 20-07) that closed or severely restricted non-essential businesses in Broward County. Likewise, Miami-Dade Mayor Carlos Giménez issued Emergency Orders 3-20, 7-20 and 9-20 severely restricting or closing non-essential businesses in the County, including hotels and other travel venues.

34. Then, on March 30, 2020 Governor DeSantis issued Executive Order 20-89, explicitly limiting access to businesses in South Florida:

I hereby order Miami-Dade County, Broward County, Palm Beach County and Monroe County to restrict public access to businesses and facilities deemed non-essential pursuant to the guidelines established by Miami-Dade County pursuant to its March 19, 2020 Emergency Order 07-20, and as modified by subsequent amendments and orders prior to the date of this order.

35. Other similar state and local civil authority orders have been issued that close or restrict access to all non-essential business operations or prohibit public access to the property of non-essential businesses where the individuals gather in close proximity to each other in order to protect the public from the dangerous condition of contracting the respiratory illness named COVID-19.

36. The civil authority orders expressly state that the closing of non-essential businesses, reductions in permitted operating hours, and social distancing restrictions placed on the public are necessary emergency measures to protect the health and safety of all residents in Florida due to the spread of COVID-19 through human-to-human and surface-to-human contact with the coronavirus.

37. The COVID-19 pandemic is a “natural disaster.” Like other specific disasters, such as hurricanes or earthquakes, it involves substantial damage to property, hardship, suffering, and loss of life.

38. Unsurprisingly, already, at least one State Supreme Court has recognized, in *Friends of DeVito v. Wolf*, that the damage caused by the COVID-19 pandemic is indistinguishable from those caused by earthquakes, fires and the other casualty events:

We agree with Respondents that the COVID-19 pandemic qualifies as a “natural disaster” under the Emergency Code...

2020 Pa. LEXIS 1987, at *31 (Pa. April 13, 2020).

39. Losses from disasters are what business income insurance coverage has always been intended to cover.

40. The nature of Plaintiff's non-essential business is sale of its products to places such as hotels, airports and entertainment venues deemed dangerous because they each constitute a place where individuals socialize and gather in close proximity. The intended purpose of Plaintiff's premises, and those of its dependent properties, is to provide a safe environment for its employees and customers to use and enjoy.

41. As a direct result of the existence of the national healthcare disaster and COVID-19 emergency, and orders to close non-essential businesses, hotels and other establishments in Florida and throughout the nation, Plaintiff suffered a physical loss of its business income and has incurred extra expenses. The loss continues.

42. Further, the civil authority actions closing non-essential business and restricting the public from accessing Plaintiff's dependent locations and the area surrounding those locations resulted from unsafe and dangerous physical conditions which caused a suspension of Plaintiff's business operations and loss of its business income. Over 75,000 cases of COVID-19 have been reported in the State of Florida. This shows that the population is vulnerable to contracting COVID-19 throughout the state, and that dangerous conditions permeate all property, including the areas surrounding Plaintiff's premises and those of its dependent properties.

43. Specifically, the civil authority orders have denied access to premises where Plaintiff's products are sold and causing Plaintiff's business operations to be nearly eliminated or destroyed.

D. Plaintiff Has Suffered and Continues to Suffer a Loss Under the Policy, But Was Denied Coverage

44. The business income losses Plaintiff has and continues to suffer, and the extra expenses Plaintiff has incurred are covered under the Policy, yet Defendant on April 15, 2020 denied coverage despite Plaintiff's timely notice of its claim.

45. Due to the proclaimed national disaster, state and local state of emergency declarations, and related civil authority orders intended to keep the public safe, Plaintiff has suffered business income losses from the reduction and suspension of business operations, and has incurred extra expenses.

46. These losses and expenses have continued through the date of filing of this action as Plaintiff's dependent businesses who purchase its products remain severely reduced.

47. Plaintiff's lost business income and extra expenses due to a national disaster are covered under the Policy, are not limited and have not been excluded from coverage. Plaintiff is entitled to be indemnified by Defendant for its business income losses and expenses incurred.

48. Thus, Defendant is in breach of the Policy for denying coverage.

COUNT I

BREACH OF CONTRACT

49. Plaintiff incorporates by reference paragraphs 1 – 48 as though fully set forth herein.

50. Plaintiff has a commercial businessowners insurance policy issued by Defendant.

51. Plaintiff has performed all its obligations as specified by the Policy including the payment of all premiums due.

52. Plaintiff's Policy provides coverage for business income loss, extended business income loss, and extra expense for unexpected and unexcluded covered causes of loss.

53. As stated above, Plaintiff had to involuntarily close its non-essential business and cease or substantially reduce its operations due to the national healthcare disaster and COVID-19 emergency and resulting measures put in place by civil authority orders that closed hotels and other customer locations, and thus has incurred substantial business income losses and extra expenses.

54. Defendant denied and refused to provide coverage for Plaintiff's business income losses, and extra expenses.

55. As a result of Defendant's breach of the Policy, Plaintiff has suffered actual damages.

WHEREFORE, Plaintiff seeks compensatory damages resulting from Defendant's breach of contract, an appraisal to determine the amount of Plaintiff's damages, and further seeks all relief deemed appropriate by this Court, including attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- (1) Awarding Plaintiff compensatory damages from Defendant's breach of the insurance contract in an amount to be determined at trial or appraisal ordered by this Court, together with appropriate prejudgment interest at the maximum rate allowable by law;
- (2) Awarding Plaintiff costs and disbursements and reasonable allowances for the fees of Plaintiff's experts, and reimbursement of expenses;
- (3) Awarding Plaintiff attorneys' fees pursuant to Fla. Stat. § 627.428; and
- (4) Awarding such other and further relief the Court deems just, proper, and equitable.

DEMAND FOR A JURY TRIAL

Plaintiff requests a jury trial for any and all Counts for which a trial by jury is permitted by law.

Respectfully submitted June 19, 2020.

/s/ Javier A. Lopez

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