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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

9202711

MOTHERWAY & NAPLETON, LLP,)
)
 Plaintiff,)
)
 v.)
)
 SENTINEL INSURANCE COMPANY)
 LIMITED a/k/a THE HARTFORD, and)
 JOSEPH T. SNYDER & ASSOCIATES, LTD.,)
)
 Defendants.)

Case No. 2020L004977

Commercial Calender

COMPLAINT AT LAW

NOW COMES Plaintiff, MOTHERWAY & NAPLETON, LLP, and complains against Defendants, SENTINEL INSURANCE COMPANY LIMITED a/k/a THE HARTFORD (hereinafter "HARTFORD INSURANCE") and JOSEPH T. SNYDER & ASSOCIATES, LTD. (hereinafter "SNYDER") as follows:

THE PARTIES

1. Plaintiff, MOTHERWAY & NAPLETON, LLP (hereinafter "Plaintiff") is an Illinois limited liability partnership with its principal place of business at 140 South Dearborn Street, Suite 1500, Chicago, Illinois.

2. Defendant, HARTFORD INSURANCE, is a Connecticut insurance company authorized to do business in Illinois, engaged in the business of selling commercial insurance to business entities in Cook County, Illinois.

3. Defendant, SNYDER, is an Illinois corporation and licensed insurance agency, engaged in the business of selling, soliciting, and negotiating commercial insurance contracts with business entities in Cook County, Illinois.

4. At all times relevant, Defendant, SNYDER, acted and/or omitted to act as an actual agent, apparent agent, or implied agent of Defendant, HARTFORD INSURANCE.

PERSONAL JURISDICTION

5. The Circuit Court of Cook County has authority to exercise personal jurisdiction over Defendants, HARTFORD INSURANCE and SNYDER, and each of them, based on one or more of the following:

- a. This dispute arises out of Defendants systematic and continuous contacts with Illinois while engaged in the business of selling commercial insurance;
- b. At all relevant times, Defendants transacted business and continue to transact business in Illinois, 735 ILCS 5/2-209(a);
- c. Defendant, HARTFORD INSURANCE, contracted to insure property or risk located in the State of Illinois at the time of contracting, 735 ILCS 5/2-209(b);
- d. Defendant, HARTFORD INSURANCE, entered into a contract substantially connected with Illinois, 735 ILCS 5/2-209(c);
- e. Defendant, SNYDER, is an Illinois corporation subject to an Illinois court's exercise of personal jurisdiction.

VENUE

6. The Circuit Court of Cook County is the proper venue for Plaintiff's claims against Defendants, HARTFORD INSURANCE and SNYDER, and each of them, based on one or more of the following:

- a. The events, acts, or omissions giving rise to Plaintiff's claims occurred in Cook County, 735 ILCS 5/2-101;
- b. Plaintiff is a resident of Cook County and brings this action against Defendant, HARTFORD INSURANCE, an insurance company doing business in Illinois, 735 ILCS 5/2-103(e).

THE HARTFORD INSURANCE POLICY

7. On or about July 31, 2019, Plaintiff and Defendant, HARTFORD INSURANCE, entered into Spectrum Business Owners Policy No. 83 SBA PT9954 (hereinafter the “Policy.”) A true and accurate copy of the Policy is attached hereto as Exhibit A and incorporated herein by reference.

8. At all times relevant, the Policy has remained a valid and enforceable insurance contract between Plaintiff and Defendant, HARTFORD INSURANCE.

9. Under the Policy’s terms, Plaintiff agreed to pay substantial premiums in exchange for Defendant, HARTFORD INSURANCE’S, promise to insure against losses sustained at Plaintiff’s place of business between October 14, 2019 until October 14, 2020.

10. In exchange for the aforesaid premiums, Defendant, HARTFORD INSURANCE, agreed to provide Plaintiff “virus coverage” in the amount of \$50,000.00.

11. Following the global spread of Severe Acute Respiratory Syndrome Coronavirus (“SARS”) in 2002 and 2003, it is the insurance industry’s custom and practice to expressly exclude coverage for pandemic-related losses in insurance policies that do not cover such losses.

12. The express terms of the Policy do not exclude losses incurred from a pandemic.

13. In exchange for the aforesaid premiums, Defendant, HARTFORD INSURANCE, agreed to pay “actual loss of Business Income” upon a “necessary suspension of operations” resulting from “direct physical loss of or damage” at Plaintiff’s premises. (Ex. A, Pg. 10 of 25).

14. The Policy’s terms provide that a “suspension” occurs when there has been a “partial slowdown or complete cessation” of business activities, or when “part or all of the described premises is rendered untenable as a result of a covered cause of loss[.]” (Ex. A, Pg. 10 of 25).

15. The Policy’s terms define “Business Income” to mean “Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no physical loss or damage had occurred” as well as “continuing necessary operating expenses incurred.” (Ex. A, Pg. 10 of 25).

16. In exchange for the aforesaid premiums, Defendant, HARTFORD INSURANCE, agreed to “pay reasonable and necessary Extra Expense” that Plaintiff incurred during a business interruption which Plaintiff “would not have incurred if there had been no direct physical loss or damage to covered property at the scheduled premises.”(Ex. A, Pg. 10 of 25).

17. The Policy’s terms define “Extra Expense” as an expense incurred to “avoid or minimize the suspension of business and to continue operations”; to “minimize the suspension of business if [Plaintiff] cannot continue operations”; or to “repair or replace any property[.]” (Ex. A, Pg. 10 of 25).

18. In exchange for the aforesaid premiums, Defendant, HARTFORD INSURANCE, agreed to provide “Civil Authority” coverage for “damage to property other than property” at Plaintiff’s premises, which includes losses caused by governmental action “taken in response to dangerous physical conditions.” (Ex. A, Pg. 11 of 25).

19. The terms of the “Civil Authority” coverage provision state that Defendant, HARTFORD INSURANCE, will pay for “the actual loss of Business Income [Plaintiff] sustain[s] when access to [its] premises is specifically prohibited by order of a civil authority as the direct result of a Covered Cause of Loss to property.” (Ex. A, Pg. 11 of 25).

20. The terms of the “Civil Authority” coverage provision state that “coverage for Business Income will begin 72 hours after the order of a civil authority” and that coverage will

end at the earlier of either “when access is permitted to your scheduled premises” or “30 consecutive days after the order of civil authority.” (Ex. A, Pg. 11 of 25).

PLAINTIFF’S CORONAVIRUS AND CLOSURE-ORDER LOSSES

21. Severe Acute Respiratory Syndrome II (hereinafter “COVID-19”) is a virus.

22. The COVID-19 virus physically infects and remains alive on surfaces for 17 days.

23. The COVID-19 virus has the ability to remain on surfaces for up to four weeks in low temperatures.

24. When COVID-19 infects a host, the virus is transmissible through the breath that said host inhales and exhales.

25. The COVID-19 virus remains in the air for three hours after an infected host inhales and exhales the air.

26. The COVID-19 virus is capable of being transported through ventilation and “HVAC” systems while airborne.

27. Property exposed to the COVID-19 contagion is unsafe and dangerous for occupants and users.

28. The presence of a dangerous substance on physical property or while airborne in a physical property constitutes “physical loss or damage.” *See, e.g., Bd. of Educ. of Twp. High Sch. Dist. No. 211 v. Int’l Ins. Co.*, 720 N.E.2d 622, 625–26 (Ill. Ct. App. 1999), as modified on denial of reh’g (Dec. 3, 1999).

29. On March 11, 2020, the World Health Organization declared the global spread of COVID-19 a pandemic.

30. On March 20, 2020, Illinois Governor J.B. Pritzker issued an executive order and related extensions in response to the aforesaid pandemic that required all “non-essential businesses” to close until May 30, 2020 (hereinafter the “Closure Order.”)

31. On March 26, 2020, Plaintiff, and other tenants at 140 South Dearborn Street, were notified that an individual one floor above Suite 1500, in Suite 1600, tested positive for COVID-19. A true and accurate copy of the March 26, 2020 notification from the landlord/building management of 140 S. Dearborn Street, a/k/a The Marquette Building is attached hereto as Exhibit B.

32. Plaintiff’s premises shares a communal elevator, lobby, stairways, ventilation system, hallways, and bathrooms with the tenants and individuals officing in Suite 1600 of The Marquette Building.

33. On April 28, 2020, Plaintiff was notified that a janitorial night crew member at 140 South Dearborn Street tested positive for COVID-19. A true and accurate copy of the April 28, 2020 notification from the landlord/building management of 140 S. Dearborn Street, a/k/a The Marquette Building is attached hereto as Exhibit C.

34. The aforesaid individual worked in the communal areas of the building, used the elevators, lobbies, and was specifically assigned to the floors at or near Plaintiff’s premises.

35. On and before March 26, 2020, and continuing to the present, the COVID-19 virus remains physically present on the surfaces at Plaintiff’s insured premises.

36. On and before March 26, 2020, and continuing to the present, the COVID-19 virus remains physically present in the air ventilated into Plaintiff’s insured premises.

37. The continuous presence of the coronavirus on or around Plaintiff’s premises has rendered the premises unsafe and unfit for its intended use.

38. The continuous presence of the virus at Plaintiff's insured premises caused physical property damage or loss under the terms of the Policy.

39. As a result of the presence of the COVID-19 virus, the Closure Orders and pandemic, the Plaintiff has been forced to halt ordinary operations.

40. Plaintiff has sustained lost revenues as a result of the aforesaid halt in operations.

41. Plaintiff has been forced to furlough and/or lay off a number of employees as a result of the aforesaid halt in ordinary operations and revenue loss.

42. As a result of the Closure Orders, and the presence of the virus on Plaintiff's Premises, the Plaintiff has suffered substantial business income losses and incurred extra expense as defined by the aforesaid policy.

43. The covered losses incurred by Plaintiff and owed under the Policy exceed fifty-thousand dollars (\$50,000.00) at present, are continuing, and are expected to exceed ten million dollars (\$10,000,000.00).

COUNT I: DECLARATORY JUDGMENT – HARTFORD INSURANCE

44. Plaintiff re-alleges and incorporates paragraphs one through forty-three as if fully set forth herein.

45. An actual case or controversy exists regarding Plaintiff's rights and Defendant, HARTFORD INSURANCE'S, obligation to pay the full amount of Plaintiff's business interruption, virus, and civil authority closure order losses.

46. Plaintiff has performed all conditions precedent on its part to receive payment under the Policy from Defendant, HARTFORD INSURANCE.

47. Plaintiff has complied with all applicable provisions of the Policy, including payment of the premiums in exchange for coverage under the Policy.

48. The COVID-19 virus has remained physically present at Plaintiff's insured premises from March 26, 2020 to the present.

49. The COVID-19 virus' dangerous and unsafe nature has damaged Plaintiff's insured premises from March 26, 2020 to the present.

50. The COVID-19 virus has rendered parts or all of Plaintiff's premises untenable from March 26, 2020 to the present.

51. Plaintiff has slowed down and/or completely ceased business operations in response to the physical damage the COVID-19 virus has done at Plaintiff's insured premises.

52. Plaintiff has incurred expenses that would not have been incurred if there had been no direct physical loss or damage to Plaintiff's insured premises from the COVID-19 virus.

53. Plaintiff has lost revenue and incurred expenses from the necessary suspension of business operations at its premises.

54. Hartford Insurance has refused to reimburse Plaintiff for claimed losses incurred from the virus, the aforesaid presence of the virus on Plaintiff's premises, the aforesaid necessary interruption of Plaintiff's business from the COVID-19 pandemic, and the aforesaid Closure Order.

55. Plaintiff seeks a declaratory judgment from this Court declaring the following:

- a. Plaintiff's losses incurred in connection with the virus and pandemic and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the Policy;
- b. Hartford Insurance has waived any right it may have had to assert defenses to coverage or otherwise seek to bar or limit coverage for Plaintiff's losses by issuing a blanket coverage denial without conducting a claim investigation as required under Illinois law; and
- c. Hartford Insurance is obligated to pay Plaintiff for the full amount of the losses incurred and to be incurred in connection with the covered business losses related

to the virus and Closure Orders during the indemnity period and the necessary interruption of their business stemming from the COVID-19 pandemic.

COUNT II: BREACH OF CONTRACT -- HARTFORD INSURANCE

56. Plaintiff re-alleges and incorporates paragraphs one through fifty-five as if fully set forth herein.

57. Plaintiff has performed all conditions precedent on its part to receive payment under the Policy from Defendant, HARTFORD INSURANCE.

58. Defendant, HARTFORD INSURANCE, has materially breached the Policy in one or more of the following ways:

- a. Repudiated the Policy in writing after Plaintiff submitted a claim for loss caused by COVID-19;
- b. Refused to pay limited fungi, bacteria, or virus coverage;
- c. Refused to pay business income and extra expenses for up to 12 months of the actual loss sustained for business interruption losses; and/or
- d. Refused to pay business income losses caused for civil authority coverage.

59. As a direct and proximate result of Defendant, HARTFORD INSURANCE'S, aforesaid material breaches of the Policy, Plaintiff has sustained expectation damages and consequential damages that exceed fifty thousand dollars (\$50,000.00) at present, and which continue to accrue.

WHEREFORE, Plaintiff, MOTHERWAY & NAPLETON, LLP, demands judgment against Defendant, HARTFORD INSURANCE, for a sum in excess of the jurisdictional limit of the Circuit Court of Cook County in an amount to be established at trial, and any further relief that this Court deems appropriate.

COUNT III: BAD FAITH CLAIMS HANDLING – HARTFORD INSURANCE

60. Plaintiff re-alleges and incorporates paragraphs one through fifty-nine as if fully set forth herein.

61. Following the March 26, 2020 notice that the COVID-19 was present at Plaintiff's premises, Plaintiff submitted an insurance claim to Defendant, HARTFORD INSURANCE, for virus coverage and business interruption losses under the Policy.

62. Upon receipt of Plaintiff's claimed losses, Defendant, HARTFORD INSURANCE, immediately denied the claims.

63. Defendant, HARTFORD INSURANCE'S, denial is vexatious and unreasonable under the Illinois Insurance Code as a result of one or more of the following:

- a. Defendant repudiated the Policy in writing after Plaintiff submitted a claim for loss caused by COVID-19;
- b. Defendant provided no explanation or reason for its refusal to pay Plaintiff's claimed losses;
- c. Defendant conducted no investigation into Plaintiff's claimed losses prior to issuing a coverage denial;
- d. Defendant used a form or "boilerplate" letter to deny Plaintiff's claims that failed to address the specific, customizable Policy that Plaintiff purchased;
- e. Defendant's aforesaid form or "boilerplate" letter failed to address Plaintiff's specific insurance claims and losses;
- f. Defendant took no action to confirm whether the COVID-19 virus was physically present at Plaintiff's premises prior to denying Plaintiff's claims;
- g. Defendant refused to pay Plaintiff's claimed losses without conducting a reasonable investigation based on all available information in violation of 215 ILCS 5/154.6(h);
- h. Defendant refused to pay Plaintiff's claimed losses without providing a reasonable and accurate explanation of the basis of its denials in violation of 215 ILCS 5/154.6(h);

- i. Defendant compelled a policyholder to institute suit to recover an amount due under the Policy in violation of 215 ILCS 5/154.6(e);
- j. Defendant has failed to raise a bona fide dispute as to the whether the claims were covered by the Policy or otherwise explain its decision-making;
- k. Defendant's denial failed to include any relevant discussion of the Policy Plaintiff purchased.
- l. Defendant's denial that the physical presence of a fatal virus constitutes a "physical loss" amounts to a bad faith attempt to limit its exposure.

64. As a direct and proximate result of one or more of the following, Plaintiff, has incurred attorneys fees and other costs to recover the amounts due under the Policy.

WHEREFORE, Plaintiff demands judgment against Defendant, HARTFORD INSURANCE, for the amount owed under the Policy at the time of judgment, and that the Court enter a judgment in favor of Plaintiff and against Defendant, HARTFORD INSURANCE, for an amount equal to the greater of (1) 60% of the amount which the trier of fact finds that Plaintiff is entitled to recover under the Policy, exclusive of costs; and (2) \$60,000 per Plaintiff pursuant to 215 ILCS 5/155. Plaintiff further requests that the Court enter a judgment in favor of Plaintiff and against Defendant HARTFORD INSURANCE, in an amount equal to the attorney's fees and costs incurred by Plaintiff for the prosecution of this coverage action in an amount to be proven at or after trial, pursuant to 215 ILCS 5/155.

COUNT IV: NEGLIGENCE – SNYDER

65. Plaintiff re-alleges and incorporates paragraphs one through sixty-four as if fully set forth herein.

66. At all times relevant, Defendant, Snyder, had a duty to exercise ordinary care and skill in renewing, procuring, binding, or placing the coverage requested by the insured or proposed insured.

67. Defendant, Snyder, was negligent in one or more of the following manners:

- a. Failing to procure, bind, and place coverage for the plaintiff as requested;
- b. Failing to advise Plaintiff that the limited virus coverage in the Policy would not, in fact, cover losses caused by viruses;
- c. Failing to advise Plaintiff that despite the policy not excluding coverage for pandemics, losses caused by pandemics would not be covered;
- d. Failing to advise Plaintiff that despite the policy not excluding coverage for viruses, losses caused by viruses would not be covered;
- e. Were otherwise negligent.

68. As a direct and proximate result of Defendant Snyder's negligent conduct, Plaintiff purchased the Policy and Defendant Hartford refuses to pay the full amount of losses suffered by Plaintiff.

69. If Defendant, SNYDER, had exercised the reasonable standard of care, Defendant Hartford would have paid the full amount of the Plaintiff's claim.

WHEREFORE, Plaintiff, MOTHERWAY & NAPLETON, LLP, by its attorneys, demands judgment against the Defendant, Snyder, in a sum in excess of FIFTY THOUSAND (\$50,000.00) DOLLARS.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court:

70. Enter a declaratory judgment on Count I of the Complaint in favor of Plaintiff and Against Defendant, HARTFORD INSURANCE, ordering as follows:

(a) Plaintiff's losses incurred in connection with the virus and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the Policies;

(b) Hartford Insurance has waived any right it may have had to assert defenses to coverage or otherwise seek to bar or limit coverage for Plaintiff's losses by issuing a

blanket coverage denial without conducting a claim investigation as required under Illinois law; and

(c) Hartford Insurance is obligated to pay Plaintiff for the full amount of the losses incurred and to be incurred in connection with the covered business losses related to the virus during the indemnity period and the necessary interruption of their business stemming from the COVID-19 pandemic.

Enter a judgment on Count II of the Complaint in favor of Plaintiff and against Defendant, HARTFORD INSURANCE, and award expectation and consequential damages for breach of contract in an amount to be proven at trial.

71. Award to Plaintiff and against Defendant, HARTFORD INSURANCE, prejudgment interest, to be calculated according to law, to compensate Plaintiff for the loss of use of funds caused by Defendant, HARTFORD INSURANCE'S, wrongful refusal to pay the full amount of the claimed losses that Plaintiff incurred.

72. Award Plaintiff such other, further, and additional relief as this Court deems just and appropriate.

73. Enter a judgment on Count III of the Complaint in favor of Plaintiff and against Defendant, HARTFORD INSURANCE, in an amount equal to the greater of (1) 60% of the amount which the trier of fact finds that Plaintiff is entitled to recover under the Policy, exclusive of costs; and (2) \$60,000;

74. Enter a judgment in favor of Plaintiff and against Defendant HARTFORD INSURANCE, in an amount equal to all attorneys' fees and related costs incurred for the prosecution of this coverage action against Defendant, HARTFORD INSURANCE, pursuant to 215 ILCS 5/155, the amount to be established at the conclusion of this action;


75. Award to Plaintiff and against Defendant, HARTFORD INSURANCE, prejudgment interest, to be calculated according to law, to compensate Plaintiff for the loss of

use of funds caused by Defendant, HARTFORD INSURANCE'S, wrongful refusal to pay Plaintiff for the full amount of the claimed losses that Plaintiff incurred.

76. Award Plaintiffs such other, further, and additional relief as this Court deems just and appropriate.

Date: May 6, 2020

Respectfully submitted,



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