

**IN THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION**

LA ISSY, INC.

a Domestic Corporation,
Plaintiff,

vs

Case No. _____

HARTFORD CASUALTY INSURANCE COMPANY

a Foreign Corporation,
Defendant,

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW, the Plaintiff, LA ISSY, INC., by and through its undersigned Attorney, and files this it's complaint against the Defendant, HARTFORD CASUALTY INSURANCE COMPANY, and alleges:

JURISDICTION

1. The matter in controversy exceeds the sum of \$30,000.00 exclusive of interest, attorneys fees and costs.
2. Plaintiff, LA ISSY, INC., was, at all times material to the allegations in this Complaint, a Corporation organized and existing under the laws of the State of Florida and engaged in the business of a hair salon located in Palm Harbor, Florida.
3. Defendant, HARTFORD CASUALTY INSURANCE COMPANY, is and at all times material to the allegations in this Complaint was a Corporation organized and existing under the laws of the State of Connecticut, having its principal place of business

in Hartford, Connecticut who was authorized and licensed to do business in the State of Florida as an insurer and who had an agent in Hillsborough County, Florida making venue proper in Hillsborough County, Florida pursuant to Florida Statute Section 47.051.

COMMON ALLEGATIONS

4. At all times material to this action, there was in existence a policy of insurance issued by Defendant to Plaintiff, providing coverage to Plaintiff's property located at 2659 East Lake Road, Palm Harbor, Florida 34685. To the best of Plaintiff's information and belief, a copy of the subject policy is attached hereto as Exhibit "A" and is incorporated by reference herein. However, this might not be the full and complete copy. Plaintiff would allege that the Defendant has a full and complete copy of the subject policy of insurance.

5. The subject insurance policy, among other things, provides coverage for loss of business income and extra expense caused by action of civil authority that prevents access to the insured premises as more specifically set forth in Form SS 00 07 07 05 which provides in pertinent part 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."

(2) The coverage for Business Income will begin 72 hours after the order of 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.

6. On or about March 25, 2020, the Pinellas County Board of Commissioners issued a Civil Authority Order closing non essential storefront businesses, all of which is more particularly described in the copy of said Order attached hereto as Exhibit “B” which is incorporated by reference herein.

7. Plaintiff alleges that Metro PCS and Marco’s Pizza located next door to Plaintiff in the same complex were likewise shut down due to the attached order.

8. Plaintiff further alleges that this order from Pinellas County Board of Commissioners was in response to the state of emergency in Pinellas County which as outlined in the attached order was issued in response to a threat to the public health as more specifically described in the order.

COUNT I – BREACH OF CONTRACT

9. Plaintiff re-alleges and incorporates allegations one (1) through eight (8) above.

10. Plaintiff suffered a loss of business income caused by the above mentioned action of civil authority that prohibited access to property near Plaintiff’s property as well as Plaintiff’s salon because access to the property was prohibited by order of a civil authority as the direct result of a covered cause of loss to property in the immediate area of Plaintiff’s property as well as Plaintiff’s property under the terms and conditions of the policy quoted above.

11. Under the terms and conditions of the subject policy, Defendant is obligated to pay Plaintiff’s actual loss of business income and any other extra expense caused by the action of civil authorities pursuant to the terms and conditions of the subject policy.

12. Plaintiff submitted a claim for business income and extra expense losses caused by the above mentioned actions of civil authority to the Defendant.

13. By letter dated June 9, 2020, Defendant denied coverage for the subject claim. Attached as Exhibit "C" is a copy of the denial letter.

14. Because of Defendant's failure to pay Plaintiff's claim, Defendant has materially breached the terms and conditions of the subject policy.

15. As a result of the breach, Plaintiff has suffered damages in the form of lost business income which Plaintiff alleges is covered under the subject policy of insurance.

16. All conditions precedent to recover under the subject policy have been performed by the Plaintiff or waived by the Defendant.

17. Because of Defendant's breach of the subject insurance policy, Plaintiff has had to retain the services of the undersigned attorneys and have agreed to pay the undersigned attorneys a reasonable fee.

WHEREFORE, Plaintiff, LA Issy, Inc., demands judgment for damages, together with interest, costs and reasonable attorneys fees, pursuant to Section 627.428, Florida Statutes, together with such other and further relief which the Honorable Court may deem proper and demands trial by jury on all issues so triable by jury.

COUNT II – DECLARATORY JUDGMENT

18. Plaintiff re-alleges and incorporates allegations one (1) through eight (8) above.

19. This is an action for Declaratory Judgment to determine liability under the subject insurance policy pursuant to Chapter 86, Florida Statutes.

20. Plaintiff contends that the subject claim for business interruption is a covered cause of loss because the order of civil authority prevented access to Plaintiff's property and caused the business to be shut down.

21. Defendant denied Plaintiff's claim alleging that the subject policy did not provide coverage for multiple reasons.

A. Direct Physical Damage

22. Defendant's first basis for denial was that there was no direct physical damage to business personal property at the insured premises.

23. The subject policy under civil authority 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."

(2) The coverage for Business Income will begin 72 hours after the order of 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.

24. Plaintiff alleges that this additional coverage only requires a prohibition of access to the subject property as a direct result of a Covered Cause of Loss to property in the immediate area of the Plaintiff's property. This coverage does not require direct physical loss or physical damage to either the immediate property or the insured property as the Defendant is alleging. Further, Defendant appears to be arguing that a Covered Cause of Loss under the subject policy requires direct physical loss of or physical damage to Covered Property, however Plaintiff alleges that the civil authority additional coverage

section does not require direct physical loss of or physical damage, only that the loss is caused by a Covered Cause of Loss.

25. The above quoted policy provision is ambiguous and unclear as to whether or not direct physical loss of or physical damage is required at other property or even the insured premises to trigger civil authority coverage and a reasonable interpretation of the policy should be that if property around the insured location suffers damage, not direct physical loss or damage which is a covered cause of loss, and a civil authority prevents access to that property as well as the insured property, there is coverage for the business interruption loss.

26. Plaintiff contends that Defendant has erroneously construed the subject insurance policy to require direct physical damage and that civil authority coverage is only applicable when access to the described premises is prohibited due to direct physical damage to other property. Plaintiff alleges they are entitled to recover damages for business interruption due to civil authority because other businesses were likewise shut down due to action of civil authority causing damage to the business.

B. No Covered Cause of Loss

27. Secondly, Defendant based its denial of Plaintiff's claim on the allegation that there was no covered cause of loss.

28. Plaintiff alleges that the closure by civil authority is a covered cause of loss. Plaintiff further alleges that the subject policy is an all risk policy which provides that the loss is covered unless specifically excluded.

29. Defendant sites to several exclusions which Plaintiff alleges do not apply to the subject loss. If the loss is not specifically excluded, then pursuant to the terms and conditions of the subject policy, the loss would be covered. Because closure of the business due to civil authority is not an excluded cause of loss, Plaintiff alleges the damage to both other properties and the insured premises were caused by a covered cause of loss and therefore this claim should be covered.

30. The provisions of the policy on which Defendant is relying for the position that this is not a covered cause of loss are ambiguous and unclear as to what should be considered a covered cause of loss and whether shut down due to order of civil authority is a covered cause of loss because this is an all-risk policy. A reasonable interpretation of the policy should be that if the loss is not excluded, then there is coverage for the business interruption loss.

31. Plaintiff contends that Defendant has erroneously construed the subject insurance policy and that Plaintiff is entitled to recover damages for business interruption due to civil authority.

C. Pollutant Exclusion

32. The Defendant further bases the denial of the claim by relying on the pollution exclusion which Plaintiff alleges does not apply. The subject policy provides as follows:

B. Exclusions

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

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 of the resulting physical loss or physical damage caused by the “specified cause of loss.”

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.

33. Plaintiff alleges that this definition is ambiguous as to whether or not it would include a virus within the definition. Plaintiff alleges that the COVID-19 virus is not considered a solid, liquid, gaseous or thermal irritant or contaminant and is not a waste. Therefore, Plaintiff alleges that this definition and any attempt to use this definition to exclude the loss are not applicable.

34. Plaintiff contends that Defendant has erroneously construed the subject insurance policy by alleging that coronavirus is an irritant or contaminant which causes or threatens to cause physical impurity. Plaintiff would allege a reasonable interpretation of this exclusion would be if a pollutant infected Plaintiffs business product it would be excluded. Plaintiff alleges that it is entitled to recover damages for business interruption due to civil authority because the virus is not a pollutant.

D. Delay, Loss of use or loss of market

35. The Defendant asserts that the loss is excluded based on the following exclusion:

B. Exclusions

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

a. Consequential Losses; Delay, loss of use or loss of market

36. Plaintiff alleges that this definition is ambiguous as to what is meant by “loss of use” or “loss of market”. The policy does not define these terms and Plaintiff would allege that any loss of use caused by a covered cause of loss would be covered because the cause of the claim or damage was the covered cause of loss, not the resulting loss of use. Further Plaintiff would allege that there was not loss of market in terms of business but instead, the loss of business was caused by the civil authority order, not a loss of market. Finally, Plaintiff is not claiming physical loss or physical damage caused by loss of use or loss or market and therefore this exclusion should not apply.

37. Plaintiff contends that Defendant has erroneously construed the subject insurance policy as well as this exclusion and that Plaintiff is entitled to recover damages for business interruption due to civil authority.

E. Acts or Decisions Exclusion

38. Defendant is contending that the loss is excluded based on the decision of a person, group, organization or governmental body. The specific policy provides as follows:

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.

39. Plaintiff alleges that this exclusion is ambiguous. Plaintiff alleges that this exclusion only excludes a loss if the loss was caused by an act or a failure to act or decide, of any person, group, organization or governmental body. Plaintiff would allege the loss is not the result of an action or decision of a governmental body but was caused by the denial of access to the subject property by civil authority which is expressly covered in the subject policy.

40. Plaintiff contends that Defendant has erroneously construed the subject insurance policy as well as this exclusion and that Plaintiff is entitled to recover damages for business interruption due to civil authority.

F. Fungi, Bacteria or Virus Exclusion

41. The Defendant alleges that the loss is excluded due to the Fungi, Bacteria or Virus Exclusion. This specific exclusion provides as follows:

A. "Fungi", Wet Rot, Dry Rot, Bacteria and Virus

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 regarding 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.

42. Plaintiff alleges that this exclusion is ambiguous. Plaintiff alleges that this exclusion only excludes a loss if the loss was caused when a “fungi”, wet rot, dry rot, bacteria or virus directly affects the insured property. Here, Plaintiff is not alleging that any virus directly affected the property. This interpretation is bolstered by the requirement that there is a “Presence, growth, proliferation, spread or any activity of “fungi”, wet rot, dry rot, bacteria or virus.” The exclusion is modified by the phrase “This exclusion does not apply: (1) When “fungi”, wet or dry rot, bacteria or virus results from fire or lightning;” Both indicate that the exclusion is meant to exclude damage when these items directly affect the property.

43. The exclusion is further modified as outlined in the denial letter and the language of that modification further supports that this exclusion only applies if there is direct damage caused by “fungi”, wet rot, dry rot, bacteria or virus.

44. Plaintiff contends that Defendant has erroneously construed the subject insurance policy as well as this exclusion and that Plaintiff is entitled to recover damages for business interruption due to civil authority.

45. Plaintiff is in doubt of its rights and obligations under the subject policy as to whether Defendant is required to pay the business interruption claim under the terms and conditions of the subject policy.

46. An actual controversy of a justifiable nature as to whether Plaintiff is entitled to recover business interruption damages under the subject policy exists between Plaintiff

and Defendant involving the rights and liabilities of Plaintiff and Defendant under the policy of insurance attached hereto and Plaintiff is in doubt as to its rights under the subject policy.

47. The controversy existing between Plaintiff and Defendant may be determined by a judgment of this Honorable Court without the necessity of other law suits.

48. Plaintiff has no other adequate remedy of law.

49. Because of Defendant's wrongful denial of Plaintiff's claim, Defendant has materially breached the terms and conditions of the subject policy.

50. All conditions precedent to recovery under the subject policy has been performed by Plaintiff and their agent or waived by Defendant.

51. Because of Defendant's breach of the subject insurance policy, Plaintiff has had to retain the services of the undersigned attorneys and agreed to pay the undersigned attorneys a reasonable fee.

WHEREFORE, Plaintiff, LA ISSY, INC., demands judgment declaring that Defendant, HARTFORD CASUALTY INSURANCE COMPANY, is required to pay Plaintiff the damages resulting from the above business interruption claim and that judgment be entered for Plaintiff's damages, together with interest, costs and reasonable attorneys fees pursuant to Section 627.428, Florida Statutes, together with such other and further relief which this Honorable Court may deem proper and demands trial by jury on all issues so triable by jury.

/s/ *Ronald S. Haynes*

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