

24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

DKT:

SECTION:

NEW ORLEANS CATERING, INC.

VERSUS

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON

FILED: _____
DEPUTY CLERK

PETITION FOR DECLARATORY RELIEF AND DAMAGES

NOW COMES, New Orleans Catering, Inc., through undersigned counsel, who respectfully represents that:

PARTIES

1. Plaintiff herein is New Orleans Catering, Inc. (hereinafter "NOCI"), a Louisiana Corporation, with its principal place of business in Jefferson Parish, Louisiana, authorized to do business in the Parish of Jefferson, State of Louisiana.

2. Made Defendant here is:

- a) Certain Underwriters at Lloyd's London (hereinafter "Lloyd's")
subscribing to Policy No. PXA0001207-00 for the period of December 15,
2019 to December 15, 2020.

JURISDICTION AND VENUE

3. This court has subject matter jurisdiction over the matters alleged herein.

4. Personal Jurisdiction exists over Lloyd's pursuant to the Louisiana Long Arm Statute, La. R.S. 13:3201.

5. On December 15, 2019, Lloyd's entered into a contract of insurance with the NOCI in Louisiana, whereby NOCI paid a premium to Lloyd's for its promise to compensate the NOCI in the event of a covered loss. Lloyd's is transacting the business of insurance in the state of Louisiana and the basis of this suit arises out of such conduct.

6. Venue in this action is proper under La. C.C.P. Article 76.

FACTUAL BACKGROUND

7. On or about December 15, 2019, NOCI and Lloyd's entered into a contract of indemnity, whereby NOCI agreed to make payments to Lloyd's in exchange for Lloyd's

promise to indemnify NOCI for losses including, but not limited to, business income losses at 1608 Justin Road, Metairie, Louisiana 70001 (hereinafter "insured premises").

8. The insured is a premier catering company, which services events throughout the greater New Orleans area.

9. The insured premises is covered under a policy issued by Lloyd's with policy number believed to be PXA0001207-00 (hereinafter "Policy").¹

10. The Policy was in full effect, providing business and personal property coverage, business income (and extra expense) coverage, between the period of December 15, 2019 to December 15, 2020.

11. NOCI faithfully paid the Policy premiums to Lloyd's to specifically provide all-risk coverage, particularly the extension of coverage in the event of a business closure by order of civil authority. The Policy's civil authority coverage provides that Lloyd's will pay the actual loss of business income sustained caused by action of civil authority that prohibits access to the insured premises due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss.

12. An "all-risk policy" is an insurance policy which covers all-risks unless clearly and specifically excluded.

13. NOCI's policy is an all-risk policy as it provides that a covered cause of loss is any physical loss unless the loss is specifically excluded or limited in the policy.

14. The Policy does not provide any exclusion due to losses, business or property, from a virus / pandemic.

15. The Policy excluded losses due to microorganisms, not viruses.

16. As has been reported on government public databases, Covid-19 has killed more than 500,000 Americans, with Orleans Parish faring particularly poorly as it was known to be an original Covid-19 hotspot.

17. Covid-19 has caused a property loss or damage covered under the policy resulting in a prohibition of access to the insured premises by a civil authority order which triggering coverage under the Policy.

¹ See Lloyd's Policy No. PXA0001207-00 attached as Exhibit A).

18. NOCI learned about the virus / contagion through the orders and directives provided by its city and state government and officials with the Center for Disease Control via publicly available data on their prospective official websites.

19. In response to the Covid-19 pandemic, Governor John B. Edwards in his official capacity as Governor of Louisiana, issued a statewide Civil Authority Order, Proclamation Number JBE 2020-33, on March 22, 2020, issuing a Stay at Home order, directing all Louisiana residents to shelter at home and limit movement outside of their homes beyond essential needs. Plaintiff's insured premises was forced to close under this order.

20. During the prohibition of access to the insured premises, none of the NOCI management team were regularly allowed to be at the insured premises during operating hours. No members of the public were allowed on the insured premises. The business was ordered to be shuttered via the civil orders.

21. Following the March 22, 2020 Stay at Home Order, the Governor issued several additional orders as to which business could begin to slowly re-open and at what capacities. At the same time, Mayor Cantrell, the Mayor of the City of New Orleans, issued various orders also limiting the capacity of people who could gather in Orleans Parish (where NOCI often holds catering events), and limited certain businesses from opening at all. Mayor Cantrell's orders ebbed and flowed, and one edict followed another, almost always more restrictive than the Governor's.

22. The attached chart outlines the various phases listing the capacity limitations imposed on business.²

23. It is undisputable that the Orders affecting NOCI were issued in part because of Covid-19's attachment to surfaces and in the air and the dangerous property condition it creates. Covid-19 impacted all areas of Louisiana, including the insured premises.

24. As a Louisiana business, NOCI must comply with the Orders, which impacts its business by severely limiting their operations.

25. As noted above, access to the insured premises was prohibited to the public, not allowing any usage between March 22, 2020 and May 15, 2020. Even when NOCI was permitted to re-open the insured premises, almost all scheduled events in 2020 (and now into

² See Exhibit B.

2021) were cancelled due to the significant capacity restrictions and unknowns of the contamination and spread of Covid-19. To date, NOCI has not been able to reopen/function at anywhere close to a profitable capacity based on the governmental orders still in place.

26. As a result of the Government Covid-19 Orders, to date NOCI suffered an approximate \$900,000 dollar decrease in revenue between March 2020 and March 2021, as compared to the same time period from March 2019 to March 2020 due to Covid-19 and the shutdown.

27. While NOCI's business revenue and profit have significantly decreased due to the dangerous property condition caused by Covid-19, NOCI has still been liable for continuing expenses including but not limited to mortgage, utility, insurance, payroll, parking, accounting fees, and servicing payments, as well as clean-up costs.

28. As a direct result of the property loss from Covid-19, NOCI has experienced an actual business income loss.

29. Based on information and belief, Lloyd's has accepted the policy premiums with no intention of providing any coverage due to direct physical loss and/or from a civil authority order shutdown due a virus / pandemic.

30. Based on information and belief, Lloyd's has denied hundreds of other business interruption claims due to COVID-19 losses.

31. Covid-19 has rendered the insured premises unsafe and unusable for ordinary use, which is a "direct physical loss" under Lloyd's Policy that triggers business income and civil authority order coverage.

32. Louisiana Courts have found that where property has been rendered unusable or uninhabitable, a physical loss has occurred.

33. Courts have further determined that whether property is intact and functional is irrelevant because physical damage is not necessary to define physical loss.

34. Lloyd's does not define the term "physical loss" within the policy.

35. Under information and belief, Lloyd's believes "physical loss" to be "structural damage."

36. An interpretation that physical loss is only structural damage is contrary to Louisiana law and the NOCI's reasonable expectations of their coverage.

37. Insurance policies must be construed to effect, not deny, coverage and any ambiguity should be interpreted in favor of the policyholder.

38. A declaratory judgment determining the coverage afforded under the Policy for virus and pandemic losses will prevent NOCI from being left without vital coverage acquired to ensure the survival of its business should operations cease due to a virus or pandemic and civil authorities' response, as has occurred due to COVID-19.

39. A claim for the losses suffered by NOCI was submitted to Lloyd's. Lloyd's denied coverage under the policy.

40. Lloyd's denial provides that Lloyd's denies that the property's contamination and exposure to COVID-19 would constitute a physical loss or damage under the terms of the Policy.

41. Information regarding NOCI's business operations during COVID-19 may only serve to ascertain the scope of loss due to the dangerous property conditions, it would not change Lloyd's interpretation of policy terms defining what constitutes a covered cause of loss.

42. The present suit seeks to determine the parties' contractual rights and duties under the contract, not the scope of a loss. Nevertheless, NOCI provided information to Lloyd's regarding the scope of the loss.

43. COVID-19's impact to NOCI's business is real and debilitating. As Lloyd's declines the extension of coverage under its policy, businesses throughout the Louisiana and our community are permanently closings its doors.

DECLARATORY RELIEF

44. Each section below containing a cause of action fully incorporates all facts and allegations set forth in each section previously set forth herein.

45. Under La. C.C.P. article 1871 the Court may declare rights, status, and other legal relations whether or not further relief is or could be claimed.

46. NOCI seeks a Declaratory Judgment to determine whether the Covid-19 Civil Authority Orders restricting the operations of it business trigger the civil authority provision of the policy issued to the NOCI.

47. NOCI asks the Court to affirm that because the all-risk Policy provided by Lloyd's does not contain an exclusion for virus or pandemic, the Policy provides coverage to NOCI for any civil authority orders shutting down or limiting the operations of its business due

to physical loss from Covid-19, and that the Policy provides business income coverage for the contamination of the insured premises by COVID-19.

CLAIM FOR DAMAGES / BREACH OF CONTRACT

48. Each section below containing a cause of action fully incorporates all facts and allegations set forth in each section previously set forth herein.

49. Provided this Court finds coverage under the policies via the aforementioned demand for declaratory relief, NOCI seeks all damages for loss of business income provided by the policies due to both Covid-19, as well as the civil authority restrictions on business operations.

PRAYER FOR RELIEF

Wherefore, Plaintiff herein, New Orleans Catering, Inc., prays that this Petition be filed into the record, that defendant, Certain Underwriters at Lloyd's, London, be cited to appear and answer same, and after due proceedings are had, there be judgment recorded in favor of Plaintiff, New Orleans Catering, Inc., and against defendant, Certain Underwriters at Lloyd's, London, declaring that the policy of insurance extends coverage from direct physical loss and/or from a civil authority order shutdown due to virus and/or pandemic and for all damages for covered losses Plaintiff may be entitled to under the policy and damages for breach thereof and any other relief under law and equity.

Respectfully submitted,

SCANDURRO & LAYRISSON, L.L.C.

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SERVICE INSTRUCTIONS ON NEXT PAGE

PLEASE SERVE:

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON

Through it Registered Agent of Process:

Louisiana Secretary of State

8585 Archives Ave.

Baton Rouge, LA 70809