

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.

MODANI GARDEN CITY, LLC,
a Florida limited liability company,

Plaintiff,

v.

BLACKBOARD INSURANCE COMPANY,
a Delaware corporation,

Defendant.

_____ /

COMPLAINT

Plaintiff Modani Garden City, LLC (“Modani”) sues Defendant Blackboard Insurance Company (“Blackboard”) 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 Modani is a Florida limited liability company and the operator of a fine furniture company with a retail store located in Garden City, New York.

3. Defendant is a Delaware corporation authorized to conduct business in Florida.

4. Venue lies in Miami-Dade County, Florida pursuant to Fla. Stat. § 47.051 because Blackboard has agents in Miami-Dade County, this is where the cause of action accrued, this is where the insurance contract was issued, and where the insured is located. *See also* Fla. Stat. § 47.011; Fla. Stat. § 47.041.

5. This Court has personal jurisdiction over Defendant pursuant to Fla. Stat. § 48.193(1)(a) because Plaintiff’s claim arises out of Defendant conducting, engaging in and

carrying on business in Florida; Defendant breaching an insurance contract in Florida by failing to perform contractual obligations that the contract requires to be performed in Florida; Defendant contracting to insure Plaintiff's insureds' premises and other properties; and Plaintiff is a Florida company headquartered in Miami, Florida.

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 healthcare disaster and COVID-19 pandemic emergency 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 involves 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") from Blackboard.

17. Plaintiff purchased this businessowners insurance policy, with policy number REGRIG00001HIBP-22375-01, effective November 1, 2019. *See* Exhibit A. The Policy protects against, among other risks, business losses and extra expenses that result from an involuntary interruption of business operations.

18. The Policy period runs until November 1, 2020, and insures Plaintiff's commercial property, the retail furniture store at which Plaintiff conducts its business operations. 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 business income losses, including coverage for losses due to the involuntary suspension of business operations.

20. Beginning in March 2020, Plaintiff was forced to suspend full business operations at the covered retail location 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 required the closure of all non-essential businesses in New York and prohibited Plaintiff from serving customers in order to prevent the store customers 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 healthcare disaster and COVID-19 pandemic emergency. 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 businessowners insurance policy that provides coverage for physical loss of the insured property 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 the 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 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 defines Plaintiff's covered property as "Business Income" for which it will pay for the loss caused by or resulting from any "Covered Cause of Loss."

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.

25. The Policy defines operations as Plaintiff's "business activities occurring at the described premises."

26. The Policy defines business income as "Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no physical loss had occurred."

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.

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 loss of the property.

29. The Policy includes coverage for actions of Civil Authority, providing 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 the premises in response to dangerous physical conditions.

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

30. On March 7, 2020 Governor Andrew Cuomo issued Executive Order No. 202, declaring a disaster emergency in the State of New York to address “the threat that COVID-19 poses to the health and welfare” of New York State residents and visitors.

31. On March 13, 2020 Laura Curran, County Executive of Nassau County declared a local state of emergency, citing her authority under Section 24 of the New York State Executive Law “to preserve the public safety and render all required and available assistance vital to the security, well-being, and health of the citizens” of Nassau County.

32. In subsequent Executive Orders Ms. Curran closed recreational facilities, schools and other facilities in Nassau County.

33. 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.”

34. Following the proclamation of a national emergency, on March 16, 2020, Governor Cuomo issued Executive Order 202.3 ordering restaurants and bars to cease on-premises service and closing gyms, fitness centers, movie theaters and gambling operations.

35. Then on March 20, 2020 Governor Cuomo issued Executive Order 202.8 closing all nonessential businesses in the State of New York.

36. In all, from March through May 2020, Governor Cuomo entered dozens of additional Executive Orders suspending or curtailing business operations in New York.¹

¹ <https://www.governor.ny.gov/executive-orders>

37. 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.

38. 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 New York due to the spread of COVID-19 through human-to-human and surface-to-human contact with the coronavirus.

39. 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.

40. 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).

41. Losses from disasters are what property-based insurance coverage has always been intended to cover.

42. The nature of Plaintiff’s business is a retail furniture store open to the public and a place where individuals gather in close proximity to browse, shop and purchase Plaintiff’s

merchandise. The intended purpose Plaintiff's fine furniture store is to provide a safe environment for its customers to use and enjoy.

43. As a direct result of the existence of the national COVID-19 emergency, and orders to close non-essential businesses in the State of New York and throughout the country, Plaintiff's store became unsafe for the public to use. Thus, Plaintiff lost the physical use of the insured store premises, suffering a significant physical loss of its business income and incurred extra expenses. The loss continues.

44. Further, the civil authority actions restricting the public from accessing Plaintiff's premises and the area surrounding it resulted from unsafe and dangerous physical conditions present at Plaintiff's business premises which caused a suspension of Plaintiff's full business operations and loss of business income. There are over 42,000 cases of people testing positive for the coronavirus and COVID-19, and over 2,100 associated deaths that have been reported in Nassau County, New York. This shows that the population is vulnerable to contracting COVID-19 throughout Nassau County and Long Island that dangerous conditions permeate all property, including the areas surrounding Plaintiff's premises.

45. Specifically, the civil authority orders have denied access to the premises, prevented customers from physically occupying the premises, caused the premises to be physically uninhabitable by customers, caused its intended purpose and function to be nearly eliminated or destroyed, and caused the suspension of the majority of business operations.

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

46. The business income losses Plaintiff has and continues to suffer, and the extra expenses Plaintiff has incurred are covered under the Policy, yet on May 26, 2020 Defendant denied coverage despite Plaintiff's timely notice of its claim.

47. 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.

48. These losses and expenses have continued through the date of filing of this action as the store operations remain suspended or severely restricted.

49. 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.

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

COUNT I

BREACH OF CONTRACT

51. Plaintiff incorporates by reference paragraphs 1 – 50 as though fully set forth herein.

52. Plaintiff has a businessowners insurance policy issued by Defendant.

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

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

55. As stated above, Plaintiff had to involuntarily close its business operations and insured premises to the public and cease or substantially reduce its business operations due to the national healthcare disaster and COVID-19 emergency and resulting measures put in place by

civil authority orders and thus has incurred substantial business income losses and extra expenses.

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

57. As a result of the 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 the Defendant as follows:

- (1) Awarding Plaintiff compensatory damages from the 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 July 16, 2020.

/s/ J a v è r A . L o p e z

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