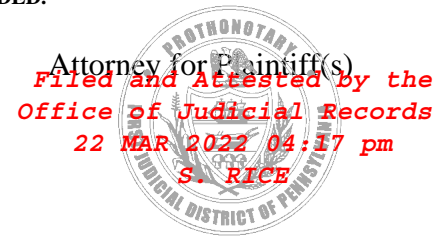


MAJOR CASE
ASSESSMENT OF DAMAGES REQUIRED.
JURY TRIAL DEMANDED.

WHEELER, DIULIO & BARNABELI, P.C.

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BRANDYWINE VALLEY PREMIER
HOSPITALITY GROUP T/A
CONCORDVILLE INN & MENDENALL
INN
780 Baltimore Pike, Concordville, PA
19331 and 325 Kennett Pike, Mendenhall,
PA 19357

vs.

FIREMANS'S FUND INSURANCE
COMPANY
225 W. Washington Street, Suite 1800
Chicago, IL 60606-3484

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

DOCKET NO.

CIVIL ACTION COMPLAINT (1C - Contract)

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the Claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA BAR ASSOCIATION
Lawyer Referral Service
1101 Market St., 11th Floor
Philadelphia, PA 19107-2911
Telephone: 215-238-6333
Fax: 215-238-1159

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascantar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademias, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO IMMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

ASOCIACION DE LICENCIADOS DE FILADELFAIA
Servicio De Referencia E Informacion Legal
1101 Market Street, 11th Floor
Filadelfia, Pennsylvania 19107
(215) 238-6333

Case ID: 220302367

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CIVIL ACTION COMPLAINT

Brandywine Valley Premier Hospitality Group, Etal, t/a Concordville Inn & Mendenall Inn (hereafter "Plaintiff") by their attorneys, Wheeler, DiUlio & Barnabei, P.C., file this Complaint against the Fireman's Fund Insurance Company (hereafter "FFIC") as follows:

1. Plaintiff is the named insured under policy number TGJ07300003-00 and maintain their principal places of business at the address set forth above.
2. FFIC is a business entity licensed to issue policies of insurance in the Commonwealth of Pennsylvania and maintains its principal place of business for that purpose at the address set forth above.

3. Defendant regularly conducts business and issues policies of insurance in the City and County of Philadelphia.

4. At all times material hereto, Defendants were acting by and through their duly authorized agents, servants, workmen or employees, including, but not limited to Andrew Wells, Jonathan Hoffman, and Laura Hitchens and Capstone ISG.

5. Defendants issued to Plaintiff a written policy of insurance Nos. TGJ07300003-00 (hereafter the "Policy", copies of the Declaration pages of which are attached hereto as Exhibits A), which provide coverage for Plaintiff, which remain in full force and effect at all times material hereto.

6. The Policy issued by Defendants contains the following pertinent coverages:

a. Civil Authority Coverage – All Locations - \$500,000

b. Communicable Disease Coverage – All Locations - \$250,000 per occurrence

and annual limit

7. In consideration for the premium paid, the Policies provide coverage for Business Interruption and Extra Expense in the amount of \$6,005,000.

8. In consideration for the premium paid, the Policies provide coverage for Plaintiff's buildings and personal property.

9. There is no applicable exclusion or limitation in the Policies for loss caused directly or indirectly by virus, pandemic or related perils.

10. Rather, the policy provides the following:

1. Communicable Disease Coverage

a. (1) We will pay for direct physical loss or damage to **Property Insured** caused by or resulting from a covered **communicable disease event** at a location including the following necessary costs incurred to:

(a) Tear out and replace any part of **Property Insured** in order to gain access to the **communicable disease** ;

(b) Repair or rebuild **Property Insured** which has been damaged or destroyed by the

communicable disease ; and

(c) Mitigate, contain, remediate, treat, clean, detoxify, disinfect, neutralize, cleanup, remove, dispose of, test for, monitor, and assess the effects the **communicable disease** .

(2) If the Declarations show a Limit of Insurance for Business Income and Extra Expense Coverage, then we will pay for the actual loss of **business income** and necessary **extra expense** you sustain due to the necessary **suspension of operations** during the **period of restoration** The **suspension** must be due to direct physical loss or damage to property at a location caused by or resulting from a covered **communicable disease event**

11. A virus, while small, is physical in nature in that it is made up of atoms, genetic material, and proteins, all physical items.

12. By way of comparison, a thought is not physical as it has no physical form.

13. “Accidental”, although not defined in the Policies, is generally understood to mean an event which is neither intended nor expected from the point of view of the insured party.

14. In addition, the policy provides “civil authority” coverage against risk of loss arising from the acts of any “Civil Authority.”

15. The “civil authority” coverage provides benefits for loss of Business Income resulting from the actions of a “Civil Authority” i.e., a state or local government agency.

16. This Civil Authority coverage is not controlled, bound, or otherwise connected to any other insuring agreement or endorsement of the policy which may contain exclusions or limitations not contained in this coverage.

17. Plaintiff’s Policy also includes coverage for loss of Business Income and Extra Expenses incurred as the result of the acts of a “Civil Authority.”

18. On March 11, 2020, the World Health Organization declared the COVID-19 health emergency a “Pandemic.”

19. On March 16, 2020, the Center for Disease Control and Prevention issued guidelines to begin social distancing and the closing of businesses.

20. As a result, local and state authorities ordered that non-essential businesses, including Plaintiff's business, be closed.

21. As a result of the worldwide pandemic and the extent of the spread of the virus, there was and continues to be a suspected presence of virus at the property.

22. Given the widespread nature of the virus, and the ability for hosts to remain asymptomatic, Plaintiff believes that the virus was on site in some form during the shutdown.

23. Given the widespread nature of the virus, and the ability for hosts to remain asymptomatic, the law of probability indicates that the virus was on site in some form during the shutdown.

24. As a result of the worldwide pandemic, there was and continues to be a risk of COVID-19 at Plaintiff's property.

25. Beginning on March 20, 2020, the business operation of Plaintiff's business ceased as the result of the act of "Civil Authority" and Plaintiff has suffered, and continues to suffer, a loss of business income and incurred Extra Expenses in maintaining its business location which has caused significant damage and losses.

26. The closures continued throughout the pandemic.

27. As a result of these closures, Business Income from these locations ceased and Plaintiff has spent and incurred substantial Extra Expenses to maintain these premises to minimize the suspension of operations and continue business when possible. This includes periodic maintenance to disinfect these premises and clean surfaces infected with the virus.

28. Plaintiff reasonably expected this loss to be covered under the insuring provisions of its policy as well as the additional coverages which apply to losses arising from the actions of a civil authority.

29. Notice of this covered loss was given to Defendant in a prompt and timely manner and Plaintiff, at all relevant times, fully complied with all of the terms and conditions required by the Policy.

30. On or about May 6, 2020, Defendant, through its agent/representative Gallagher Basset and Monesia Brown, sent a letter denying coverage for the losses sustained by Plaintiff.

31. The letter completely ignores that plaintiff was required to evacuate the premises as a result of Covid-19, which falls directly under the policy definition for a communicable disease event.

32. Defendant's letter also fails to give notices required under the Pennsylvania Unfair Insurance Practices Act.

33. Despite giving prompt notice of this loss and repeatedly inquiring of Defendants' claims decision, Defendants have failed to comply with its duties under the policy and to date, has failed to provide coverage for this loss.

34. Coverage should be afforded under the policy.

35. As drafter of the policy Defendants could have made clear any alternative intentions regarding coverages afforded by the policy.

36. Plaintiff's loss was caused both by the presence of the virus on the property, the suspected presence of the virus on the property, as well as the act of Civil Authority on account of the pandemic.

37. Claims for Business Income Loss and Extra Expense benefits under the Policies were submitted to Defendant.

38. Thereafter, Plaintiff has done and performed all things required under the terms of the Policies.

39. Despite Plaintiff's performance in accordance with the contract terms, Defendant, has forced this litigation because it has failed to comply with its duties under the policy to indemnify the insured.

40. Solely because of Defendants' failure and refusal to pay benefits to Plaintiff as required under the Policy, Plaintiff has suffered loss and damage in an amount in excess of \$50,000.00.

COUNT I
BREACH OF CONTRACT AND DUTY OF GOOD FAITH AND FAIR DEALING

41. Plaintiff incorporates by reference herein the averments set forth above, as fully as those same were here set forth at length.

42. The Policy issued by Defendants to Plaintiff is a contract of adhesion and any ambiguity in their terms or doubts with regard to the application of coverage are to be resolved in favor of the policyholder and coverage granted in accordance with the reasonable expectations of the policyholder.

43. Plaintiff reasonably believed and relied on the terms of the Policy to afford coverage and benefits in the event that the businesses were closed as a result of the damage to the premises and acts of civil authority in response to a virus pandemic as occurred here.

44. Defendants breached the contracts of insurance and violated their duty of good faith and fair dealing by denying coverage and benefits through inaction to Plaintiff which are clearly owed under the terms of the Policies.

45. As the direct and foreseeable result of Defendant's breach of contract and its duty of good faith and fair dealing, Plaintiff has been deprived of the benefit of its bargained for benefits due and owing as a result of its covered loss, including, but not limited to Loss of Business Income, Extra Expenses and Income from its business operations. In addition, Plaintiff has suffered other consequential damages by reason of damage to its business operations for an amount in excess of the coverage set forth in the Defendants' Policy, including, but not limited to, damage to its business operations, reduction in the value, and profitability of its business operations and assets, a diminution of its cash reserves and credit standing, as well as its ability to exist in a competitive business environment

WHEREFORE, Plaintiff demands judgment against Defendants for an amount in excess of \$50,000.00 together with interest, costs of suit, counsel fees and such other relief as the Court may deem equitable and just.

COUNT II
BAD FAITH VIOLATION OF 42 Pa C.S.A. § 8371

46. Plaintiff incorporates by reference herein the averments set forth above, as fully as those same were set forth here at length.

47. Defendants have engaged in bad faith conduct toward Plaintiff with respect to its adjustment of Plaintiffs' covered loss, in violation of 42 Pa. C.S.A § 8371 *et seq.*

48. In furtherance of its bad faith and wrongful denial and refusal to pay benefits for Plaintiff's covered loss, Defendants, acting by and through its duly authorized agents, servants, workmen or employees, have engaged in the following conduct:

- a. failing to recognize the paid for coverage for communicable disease losses;
- b. violating Pennsylvania's Unfair Insurance Practices Act, 40 P.S. §§ 1171.4 *et seq.* for the reasons outlined herein, including specifically the following violations of 40 P.S. § 1171.5:
- i. misrepresenting to the Plaintiff pertinent facts or policy or contract provisions relating to coverages at issue, in violation of 40 P.S. § 1171.5(i);
 - ii. failing to acknowledge and act promptly upon written or oral communications by the Plaintiff with respect to claims arising under insurance policies purchased by the Plaintiff, in violation of 40 P.S. § 1171.5(ii);
 - iii. failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies, in violation of 40 P.S. § 1171.5(iii);
 - iv. refusing to pay claims, including Plaintiff's claim, without conducting a reasonable investigation based upon all available information, in violation of 40 P.S. § 1171.5(iv);
 - v. not attempting in good faith to effectuate prompt, fair and equitable settlements of claims, including Plaintiff's claim, in which the company's liability under the policy has become reasonably clear, in violation of 40 P.S. § 1171.5(vi);
 - vi. compelling persons, including Plaintiff, to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts due and ultimately recovered in actions brought by such persons, in violation of 40 P.S. § 1171.5(vii);

vii. failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement, in violation of 40 P.S. § 1171.5(xiv); and

viii. refusing payment of Plaintiff's claim without any basis or explanation whatsoever, in violation of 40 P.S. § 1171.5(xv).

c. violating Pennsylvania's and Unfair Claims Settlement Practices Regulations, §§ 146.1 *et seq.* by:

i. misrepresenting policy provisions in violation of § 146.4 of the Unfair Claims Settlement Practices Regulations;

ii. forcing litigation to obtain a coverage decision relating to this loss;

d. failing to provide coverage for a loss that is covered under the policy without any reasonable basis;

e. failing to provide coverage for the loss of business and income claim despite the fact that the virus is a physical entity that has caused the damage to the property in the same manner as smoke or similar particle would;

f. failing to complete a prompt and thorough investigation of Plaintiff's claim;

g. failing to pay Plaintiff's covered loss in a prompt and timely manner;

h. failing to objectively and fairly evaluate Plaintiff's claim;

i. unreasonably withholding policy benefits;

j. acting unreasonably and unfairly in response to Plaintiff's claim;

k. unnecessarily and unreasonably compelling Plaintiff to institute this lawsuit to obtain policy benefits for a covered loss, that Lloyds should have paid promptly and without the necessity of litigation.

49. As the direct and proximate result of Defendants' bad faith misconduct, as aforesaid, Plaintiff has been required to retain counsel and incur the costs of this lawsuit.

50. For the reasons set forth above, Defendants' bad faith actions in violation of 42 Pa. C.S.A. § 8371, have rendered Defendants liable for statutory damages including interest from the date the claim was made in an amount equal to the prime rate of interest plus three percent, court costs, attorney's fees, punitive damages, and such other compensatory and/or consequential damages as are permitted by law.

WHEREFORE, Plaintiff demands judgment against Lloyds for an amount in excess of \$50,000.00 together with interest, costs of suit, counsel fees, punitive damages and such other relief as the Court may deem equitable and just.

WHEELER DIULIO & BARNABEI, P.C.

BY: /s/ Anthony DiUlio
ANTHONY DIULIO, ESQUIRE
Attorney for Plaintiff(s)

VERIFICATION

I, Anthony DiUlio, counsel for Plaintiff, verify that the statements contained in the foregoing document are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

WHEELER DIULIO & BARNABEI, P.C.

BY: Anthony DiUlio /s/
ANTHONY DIULIO, ESQUIRE
Attorney for Plaintiff(s)