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Courtroom Number: 2601
Location: District 1 Court
Cook County, IL

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

FILED
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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2020CH05257

MTDB CORP. d/b/a STRIKER LANES,

Plaintiff

vs.

AMERICAN AUTOMOBILE
INSURANCE COMPANY, D/B/A
FIREMAN'S FUND/ALLIANZ,

Defendant

9992140

Case Number: 2020CH05257

JURY TRIAL DEMANDED

COMPLAINT AND REQUEST FOR DECLARATORY RELIEF

Plaintiff MTDB CORP. d/b/a STRIKER LANES, by and through undersigned counsel, states as follows for its Complaint and Request for Declaratory Relief against the defendant AMERICAN AUTOMOBILE INSURANCE COMPANY, D/B/A FIREMAN'S FUND/ALLIANZ:

I. INTRODUCTION

Plaintiff MTDB Corp. d/b/a STRIKER LANES ("MTDB Corp.") brings this action against American Automobile Insurance Company, for its failure to honor obligations under the commercial businessowners insurance policy it issued to Plaintiff. Plaintiff made premium payments expecting in its time of need, American Automobile Insurance Company would make good on its contractual obligations under the policy it wrote and issued. Then in March 2020, Plaintiff was forced to shut down its business due to the presence of SARS-CoV-2 particles (the virus that causes COVID-19) at its premises and in the community.

To protect its businesses, including its employees, Plaintiff procured business interruption insurance from American Automobile Insurance Company. In pertinent part, the policy is intended to provide coverage – and in fact does provide coverage – for losses incurred due to a “necessary suspension” of its normal revenue-generating operations, including when its businesses are forced to slow down due to the presence of a deadly physical substance – SARS-CoV-2 – at its insured premises, and when businesses are forced to close due to a government order stemming from the presence of SARS-CoV-2 in the community. But despite American Automobile Insurance Company’s express promise in its policy to cover Plaintiff’s business interruption losses, American Automobile Insurance Company has failed to pay claims.

As a result of American Automobile Insurance Company’s failure to pay its claims, Plaintiff is compelled to take legal action and file this action for a declaratory judgment pursuant to 735 ILCS 5/2-701 establishing that it is entitled to receive the benefit of the insurance coverage it purchased and for indemnification of the business losses it has sustained.

II. PARTIES, JURISDICTION AND VENUE

1. Plaintiff MTDB Corp. is a corporation organized under Illinois law with its principal place of business in Cook County, Illinois.

2. Plaintiff is the owner and operator of Striker Lanes, located at 6728 16th Street, Berwyn, IL 60402.

3. Defendant American Automobile Insurance Company (“AAIC”) is an insurance company engaged in the business of selling insurance contracts to

commercial entities such as Plaintiffs in Illinois and elsewhere. AAIC is incorporated in the State of Missouri and maintains its principal place of business in California.

4. Defendant AAIC delivered the Policy to Plaintiff in Chicago, Cook County, IL. The Policy insures Plaintiff's property, business operations, and potential liabilities in connection with its business operations, and the covered losses at issue were incurred by Plaintiff in Cook County.

5. The only issue in this case is the interpretation of the policies which is governed by Illinois law, making venue appropriate in this Court.

III. FACTUAL SUMMARY

A. The Insurance Policy

6. At all times relevant, AAIC insured Plaintiff pursuant to an insurance policy drafted and issued by AAIC.

7. Plaintiff is insured pursuant to policy number MZG80998835. A copy of the policy is attached as Exhibit A (the "Policy").

8. The Policy uses standard common forms that contain provisions at issue in this action.

9. The Insurance Services Office, Inc. ("ISO") publishes policy forms for use by the insurance industry.

10. The Policy utilizes, in part, policy forms and language published by the ISO, as reflected by the ISO copyright designation at the bottom of numerous pages of the Policy.

11. Prior to the effective date of the Policy, ISO published and made available for use a standard virus exclusion form.

12. As of the date of the Policy, the ISO standard virus exclusion form and language was made available for use by insurers, including AAIC.

13. As of the effective date of the Policy, many insurance companies were using and continue to use the ISO standard virus exclusion form and language in policies that provide business interruption coverage.

14. Defendant AAIC chose not to include the ISO standard virus exclusion form in the Policy.

15. Other than reference to a computer virus, the Policy includes no exclusion that references the word "virus."

16. Plaintiff's Policy provides coverage for loss of Business Income ("BI"), Extra Expense ("EE") coverage, and coverage for loss due to the actions of a Civil Authority.

17. Relevant portions of the Policy provide, subject to other Policy terms, Defendant Fireman's Fund:

- a. "...will pay for the actual loss of Business Income you sustain due to the necessary suspension of your operations during the period of restoration. The suspension must be caused by direct physical loss of or damage to property at the premises described in the Declarations, including personal property in the open (or in a vehicle) within 100 feet, caused by or resulting from any Covered Cause of Loss."
- b. "...will pay any Extra Expense to avoid or minimize the suspension of business and to continue operations: (a) At the described premises; or (b) At replacement premises or

at temporary locations, including: (i) Relocation expenses; and (ii) Costs to equip and operate the replacement or temporary locations. (2) We will pay any Extra Expense to minimize the suspension of business if you cannot continue operations. (3) We will pay any Extra Expense to: (a) Repair or replace any property; or (b) Research, replace or restore the lost information on damaged valuable papers and records; to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Form.”

- c. “...will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described 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.”

18. The term “civil authority” is not defined in the Policy.

19. The Policy includes no reference to the word “pandemic.”

20. While the Policy was in force, Plaintiff sustained, and continues to sustain, losses due to the physical presence of SARS-CoV-2 particles at, in, on, and/or around Plaintiff’s premises described in the Policy, as well as in the community.

21. While the Policy was in force, Plaintiff sustained, and continues to sustain, losses due to the physical presence of SARS-CoV-2 particles and the spread of COVID-19 in the community (the “Pandemic”).

22. While the Policy was in force, Plaintiff sustained, and continues to sustain, losses due to the civil authority orders issued by the governor of Illinois and the Illinois Department of Health addressing the physical presence of and harm caused by SARS-CoV-2 particles, COVID-19 and the Pandemic.

B. The SARS-CoV-2 Virus

23. SARS-CoV-2 is a virus.

24. SARS-CoV-2 is a physical substance.

25. SARS-CoV-2 is a human pathogen that causes the disease COVID-19, which can be lethal.

26. SARS-CoV-2 particles can be present outside the human body in viral fluid particles.

27. SARS-CoV-2 can spread through droplets in the air when someone coughs or sneezes

28. SARS-CoV-2 can and does remain capable of being transmitted and active on inert physical surfaces for a period of time.

29. SARS-CoV-2 particles can remain suspended in the air for hours. They can also remain active on various surfaces for up to 72 hours, including:

- a. Copper: Up to 4 hours;
- b. Cardboard: Up to 24 hours;
- c. Plastic: 2 to 3 days;
- d. Stainless steel: 2 to 3 days.

30. SARS-CoV-2 can and does remain capable of being transmitted and active on floors, walls, furniture, desks, tables, chairs, countertops, touch screens, cardboard packages, food items, silverware, plates, serving trays, glasses, straws, menus, pots, pans, kitchen utensils, refrigerators, freezers, and other items of property for a period of time.

31. SARS-CoV-2 can be transmitted by way of human contact with surfaces and items of physical property on which SARS-CoV-2 particles are physically present.

32. SARS-CoV-2 has been transmitted by way of human contact with surfaces and items of physical property located at premises in Illinois.

33. SARS-CoV-2 has been transmitted by human to human contact and interaction at premises in Illinois, including places like bars and restaurants.

34. SARS-CoV-2 can be transmitted through airborne particles emitted into the air at premises.

35. SARS-CoV-2 has been transmitted by way of human contact with airborne SARS-CoV-2 particles emitted into the air at premises in Illinois.

36. The presence of any SARS-CoV-2 particles renders items of physical property unsafe.

37. The presence of any SARS-CoV-2 particles on physical property impairs its value, usefulness and/or normal function.

38. The emission or presence of SARS-CoV-2 particles in the air physically alters the molecular and structural composition of the air.

39. The presence of any SARS-CoV-2 particles causes direct physical harm to property.

40. The presence of any SARS-CoV-2 particles causes direct physical loss to property.

41. The presence of any SARS-CoV-2 particles causes direct physical damage to property.

42. The presence of any SARS-CoV-2 particles at premises renders the premises unsafe, thereby impairing the premises' value, usefulness, and/or normal function.

43. The presence of people infected with or carrying SARS-CoV-2 particles renders physical property in their vicinity unsafe and unusable, resulting in direct physical loss to that property.

44. The presence of people infected with or carrying SARS-CoV-2 particles at premises renders the premises, including property located at that premises, unsafe, resulting in direct physical loss to the premises and property.

C. Illinois' Response to the Physical Presence of SARS-CoV-2 and the COVID-19 Pandemic

45. In response to the physical presence SARS-CoV-2 and the COVID-19 Pandemic, the governor of Illinois has issued multiple executive orders pursuant to the authority vested in him by the Illinois Constitution and the laws of Illinois.

46. Similarly, the Illinois Department of Health, pursuant to its authority under Illinois law, has issued multiple orders, including a Stay At Home Order.

47. The State of Illinois is a civil authority as contemplated by the Policy.

48. The Illinois Department of Health is a civil authority as contemplated by the Policy.

49. The governor of the State of Illinois is a civil authority as contemplated by the Policy.

50. On March 16, 2020, Illinois Governor J.B. Pritzker issued Executive Order 2020-07 stating "it is necessary and appropriate for the State of Illinois to

immediately take measures to protect the public's health in response to this COVID-19 outbreak." This order was in response to the physical presence of SARS-CoV-2 and the COVID-19 Pandemic.

51. On March 20, 2020, Governor Pritzker, in response to the physical presence of SARS-CoV-2 in the community, issued a Closure Order (Executive Order 2020-10) (a.k.a., a Stay At Home Order) requiring all Illinois residents to stay at home barring exceptions such as essential travel for essential work or supplies, exercise and recreation, through April 7, 2020. Moreover, the March 20th order reduced the allowable public and private gathering size to no more than 10 people. The March 20th order was again in direct response to the continued and increasing presence of the coronavirus on property or around Plaintiff's premises.

52. The March 20th order specifically acknowledges that SARS-CoV-2 and the COVID-19 Pandemic cause direct physical loss and damage to property. In pertinent part, paragraph 12(I) of the March 20th order provides that "entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site *due to the virus's propensity to physically impact the surfaces and personal property.*" [emphasis added]

53. On April 23, 2020, Governor Pritzker announced the statewide Stay At Home order previously set to expire April 30, 2020, was extended through May 29, 2020.

54. Plaintiff's business was required to cease and/or significantly reduce operations at its location in response to the aforementioned orders

55. Independent of the orders at issue, the overwhelmingly likely presence of SARS-CoV-2 particles at, on, and in Plaintiff's insured premises and property interrupted Plaintiff's normal business operations and resulted in significant losses.

56. The civil authority orders, including, but not limited to the Stay At Home Order currently in effect, prohibit access to Plaintiff's premises described in the Policy.

57. The State of Illinois, through the governor and the Department of Health, have issued, and continue to issue, authoritative orders governing Illinoisans and Illinois businesses, including Plaintiff's, in response to the physical presence of SARS-CoV-2 and the COVID-19 Pandemic, the effect of which have required and continue to require Plaintiff to cease and/or significantly reduce operations at, and that have prohibited and continue to prohibit access to, the premises described in the Policies.

58. State and local governmental authorities, and public health officials around the country, acknowledge that SARS-CoV-2 and the COVID-19 Pandemic cause direct physical loss and damage to property. For example:

- a. The State of Colorado issued a Public Health Order indicating that "COVID-19... physically *contributes to property loss, contamination, and damage...*" (Emphasis added);
- b. The City of New York issued an Emergency Executive Order in response to COVID-19 and the Pandemic, in

part “because the virus *physically is causing property loss and damage.*” (Emphasis added);

- c. Broward County, Florida issued an Emergency Order acknowledging that COVID-19 “*is physically causing property damage.*” (Emphasis added);
- d. The State of Washington issued a stay at home Proclamation stating the “COVID-19 pandemic and its progression... remains a public disaster affecting life, health, [and] *property...*” (Emphasis added);
- e. The State of Indiana issued an Executive Order recognizing that COVID-19 has the “propensity to *physically* impact surfaces and personal *property.*” (Emphasis added);
- f. The City of New Orleans issued an order stating “there is reason to believe that COVID-19 may spread amongst the population by various means of exposure, including the propensity to attach to surfaces for prolonged period of time, thereby spreading from surface to person and *causing property loss and damage* in certain circumstances.” (Emphasis added);
- g. The State of New Mexico issued a Public Health Order acknowledging the “threat” COVID-19 “poses” to “*property.*” (Emphasis added);
- h. North Carolina issued a statewide Executive Order in response to the Pandemic not only “to assure adequate protection for lives,” but also to “assure adequate protection of... *property.*” (Emphasis added); and
- i. The City of Los Angeles issued an Order in response to COVID-19 “because, among other reasons, the COVID-19 virus can spread easily from person to person and it is *physically causing property loss or damage* due to its tendency to attach to surfaces for prolonged periods of time.” (Emphasis added).

59. SARS-CoV-2 and the COVID-19 Pandemic are physically impacting public and private property in Illinois and throughout the country.

60. SARS-CoV-2 and the COVID-19 Pandemic have caused and continue to cause direct physical loss and damage to property.

61. People in Illinois have been diagnosed with SARS-CoV-2.

62. People in Illinois have, and have had, SARS-CoV-2 but have not been diagnosed.

63. People in Illinois have SARS-CoV-2 particles on or about their person and personal property.

64. Properties and premises throughout Illinois contain the presence of SARS-CoV-2 particles on surfaces and items of property.

65. It is probable that SARS-CoV-2 particles have been physically present at Plaintiff's premises described in the Policies during the time the Policies were in effect.

66. It is probable that SARS-CoV-2 particles have been physically present on surfaces and items of property located at Plaintiff's premises described in the Policy during the time the Policy were in effect.

67. It is probable that airborne SARS-CoV-2 particles have been physically present at Plaintiff's premises described in the Policy during the time the was in effect.

68. It is probable that people carrying SARS-CoV-2 particles in, on or about their person have been present at Plaintiff's premises described in the Complaint during the time the Policy was in effect.

69. It is probable that airborne SARS-CoV-2 particles have been physically present at Plaintiff's premises described in the Policy during the time the Policy was in effect.

70. Plaintiff has sustained direct physical loss and damage to items of property located at its premises and direct physical loss and damage to its premises described in the Policy as a result of the presence of COVID-19 particles and/or the Pandemic.

71. Plaintiff submitted a timely insurance claim to Defendant AAIC.

72. Defendant AAIC has denied Plaintiff's claim.

73. There is a dispute about whether Plaintiff is entitled to coverage under the Policy for its losses sustained and to be sustained in the future. Accordingly, Plaintiff is entitled to declaratory relief from this Court pursuant to 735 ILCS 5/2-701.

COUNT I: DECLARATORY JUDGMENT

74. The allegations contained in the foregoing paragraphs are hereby incorporated by reference.

75. There is a dispute about whether Plaintiff is entitled to coverage under the Policy for its losses sustained and to be sustained in the future. Accordingly, Plaintiff is entitled to declaratory relief from this Court pursuant to 735 ILCS 5/2-701.

76. Plaintiff is entitled to and demand a declaration that:
 - a. Plaintiff sustained direct physical loss or damage to property at their premises described in the Policies as a result of SARS-CoV-2, COVID-19 and/or the COVID-19 Pandemic;
 - b. SARS-CoV-2 and/or COVID-19 is a covered cause of loss under the Policies;
 - c. The COVID-19 Pandemic is a covered cause of loss under the Policies;
 - d. The losses incurred by Plaintiff as the result of the orders issued by the governor of Illinois and the Illinois Department of Health are covered losses under the Policies;
 - e. Defendant AAIC has not and cannot prove the application of any exclusion or limitation to the coverage for Plaintiff losses alleged herein;
 - f. Plaintiff is entitled to coverage for their past and future Business Income loss(es) and Extra Expense resulting from SARS-CoV-2, COVID-19 and/or the COVID-19 Pandemic for the time period set forth in the Policies;
 - g. Plaintiff is entitled to coverage for loss(es) due to the actions of Illinois civil authorities, including the governor of Illinois and the Illinois Department of Health;
 - h. Plaintiff has coverage for any substantially similar civil authority order in the future that limits or restricts the access to Plaintiff's places of business and/or their operations; and
 - i. Any other issue that may arise during the course of litigation that is a proper issue on which to grant declaratory relief.

77. Plaintiff does not seek a determination of its damages resulting from SARS-CoV-2, the COVID-19 or the COVID-19 Pandemic. If there is a dispute between the parties as to the amount of the loss, the Policies provide that such a dispute should be resolved by **Appraisal**:

Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

78. If there is an appraisal, we still retain our right to deny the claim.

79. Plaintiff prays for declaratory relief from the Court that Defendant AAIC must resolve any dispute about the amount of loss via Appraisal. Plaintiff also request the Court to appoint the umpire if the appraisers cannot agree.

80. Plaintiff prays for any further relief the Court deems proper, including attorney fees, interest, and costs as allowed by law or in the exercise of the Court's equitable jurisdiction.

WHEREFORE, Plaintiff seeks judgment against Defendant AAIC, as set forth above, plus interest, costs, and attorney fees as allowed by law.

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury of all issues herein so triable.

Dated: August 4, 2020

Respectfully Submitted,

By: /s/ Antonio M. Romanucci

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