

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CASE TYPE: CIVIL-OTHER

Armory Hospitality, LLC,

Court File No.: _____

Plaintiff,

COMPLAINT

vs.

Philadelphia Indemnity Insurance Companies,
a/k/a Philadelphia Insurance Companies,
a/k/a Tokio Marine Specialty Insurance,

Defendant.

Plaintiff Armory Hospitality, LLC (“Armory”), as and for its Complaint against Defendant Philadelphia Indemnity Insurance Companies, a/k/a Philadelphia Insurance Companies, a Pennsylvania corporation (“Philadelphia”) and a/k/a Tokio Marine Specialty Insurance Company, states and alleges as follows:

THE PARTIES

1. Armory is a Minnesota limited liability company with a registered office located at 510-1st Avenue N, Suite 600, Minneapolis, County of Hennepin, State of Minnesota.
2. Upon information and belief, Defendant Philadelphia is a Pennsylvania corporation having a principal place of business and authorized location for service of process at Three Bala Plaza East, Suite 400, Bala Cynwdy, Pennsylvania 19004. Philadelphia has, at all times relevant hereto, conducted the business of selling insurance coverage through policies in the State of Minnesota. Philadelphia is licensed in Minnesota as Philadelphia Indemnity Insurance Company and is designated by NAIC ID 18058. The subject policy was purchased from Philadelphia

Indemnity Insurance Companies. Philadelphia is also known as Philadelphia Insurance Companies, and Tokio Marine Specialty Insurance Company.

JURISDICTION

3. Subject matter jurisdiction is proper in this Court pursuant to Minn. Stat. §484.01.

4. Upon information and belief, this Court has personal jurisdiction over Philadelphia under Minn. Stat. § 543.19 because Philadelphia transacts business in the State of Minnesota.

5. This action is properly venued under Minn. Stat. §542.09 because the location where the loss occurred is located in Hennepin County, Minnesota.

FACTUAL ALLEGATIONS

6. Armory owns and operates a business and property located at 500–530 South Sixth Street, Minneapolis, County of Hennepin, Minnesota 55415-1531 (the “Insured Premises”).

7. Other than during the business interruption period detailed below, Armory is a thriving business that provides a venue for concerts, conventions, sporting events, tradeshow, and other private gatherings.

8. Philadelphia issued an insurance policy to Armory which provided coverage for property damage and business interruption, among other coverages identified as Policy Philadelphia issued policy number _____ (the “Policy”). The Policy included business and personal property coverage and an Elite Property Enhancement: Performing Arts and Entertainment endorsement.

9. The Policy of Insurance sold by Philadelphia to Armory includes the following provision coverage with regard to direct physical loss:

“We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.”

10. The Policy of insurance sold by Philadelphia includes a Business Income (And Extra Expense) Coverage. This Business Income coverage indemnifies the insured (The Armory) for loss of business due to a suspension of Armory’s operations caused by direct physical loss of Armory’s property or its business personal property caused by or resulting from a covered cause of loss.

11. The Business Income (And Extra Expense) Coverage policy provides the following coverage:

“We 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 premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations.

The loss or damage must be caused by or result from a Covered Cause of Loss.”

12. The Limit of coverage for business interruption loss resulting from direct physical loss under the policy is \$1,000,000.00.

13. Armory purchased the Policy and the specific additional coverages due to its desire to obtain the most expansive coverage available to protect its building and operations in the event of foreseeable or unforeseeable events that could have a significant impact on Armory’s operations.

14. In early 2020, the coronavirus pandemic spread to Minnesota.

15. This emergency triggered a wide spread shut down of businesses across the nation.

16. Because the coronavirus was present in Minnesota, the governor issued a series of executive orders (the “Orders”) to mandate the closure of certain businesses in an effort to reduce spread of the pandemic.

17. These mandates specifically affected entertainment venues in Minnesota, including Armory requiring the suspension of its business operations.

18. Between March 16, 2020 and March 12, 2021, a series of Orders were issued that interrupted and suspended Armory’s operations. Each Order extended the period of suspension for small time periods until the final Order was lifted.

19. As a result, the Orders required Plaintiff to suspend all operations from March 16, 2020 until the mandate ended on or about June 27, 2021.

20. Armory’s business operations were interrupted for over a year in order to comply with these Executive Orders.

21. The Orders impaired the building’s function and value of the Property as well as deprived Armory of occupying and controlling its business operations and using the premises as intended. Essentially, the Orders rendered the Property useless.

22. At the time it was ordered to cease operations, Armory had numerous events already scheduled and would have hosted these events had it not been for the Orders.

23. Armory was forced to cancel these events and if any funds were pre-paid to reserve the space, Armory had to refund these monies.

24. Armory has business personal property located within the building such as electronics, kitchenware, bar equipment and accessories, alcohol and other beverages needed to host the numerous previously scheduled events.

25. When Armory was forced to shut down and cease operations, Armory experienced a direct physical loss of its business personal property because Armory was not able to use its property.

26. As a result, Armory suffered a direct physical loss of its property.

27. A direct physical loss of property occurs when an owner's possession of its property is severed¹.

28. When the government orders required Armory to cease operations, Armory suffered a direct physical loss of the Insured Property and the government orders constitute a covered cause of loss under the policy.

29. Armory suffered a direct physical loss of its business personal property when its operations and business was interrupted as a result of Governmental Executive orders mandating that Armory close its doors and temporarily cease operations as a result of the coronavirus pandemic.

30. Armory filed a claim with Philadelphia under the Policy.

31. Philadelphia denied the claim and failed to issue coverage or payment to Armory in response to the claim.

32. Because Armory purchased the comprehensive Policy coverages, suffered a direct physical loss of its property and business personal property, and cooperated with all the Policy's requirements, Armory is entitled to the benefits of that coverage.

33. The total amount of loss suffered by Armory in business interruption as a result of this direct physical loss exceeded \$1,000,000.00.

COUNT I

(Declaratory Relief – Duty to Provide Coverage)

34. Armory restates and re-alleges all of the foregoing paragraphs and incorporates them by reference as if fully set forth herein.

¹ *Siefert v. IMT Insurance Company*, 542 F.Supp.3d 874 (D. Minn. 2021).

35. Philadelphia sold a policy of insurance to Armory providing coverage for business property damage and business interruption caused by direct physical loss to property under the terms of the Policy.

36. Philadelphia has denied any obligation to provide coverage for Armory's loss.

37. Philadelphia's denial of Armory's claim is wrongful and is a breach of their duty to provide coverage and pay claims pursuant to the terms of the Policy.

38. A real and justiciable controversy exists between Armory and Philadelphia.

39. Genuine conflicts exist between Armory and Philadelphia concerning Philadelphia's obligations under the Policy.

40. This action for declaratory relief is brought pursuant to Minn. Stat. § 555.01 and Minn. R. Civ. P. 57 because Armory seeks a judicial determination of the rights and duties of the parties with respect to an actual controversy arising under the Policy.

41. Armory also seeks a judicial declaration that their contentions as set forth above are correct. Such a declaration is necessary and proper at this time in order that all of the parties may determine their rights and obligations among themselves.

COUNT II
(Breach of Contract)

42. Armory restates and re-alleges all of the foregoing paragraphs and incorporates them by reference as if fully set forth herein.

43. Armory and Philadelphia entered into an insurance contract wherein Philadelphia agreed to indemnify Armory for its direct loss of the Insured Premises.

44. Armory paid premiums in full to Philadelphia for the Policy and they are entitled to the full benefits and rights afforded by that Policy.

45. Philadelphia failed to pay the Armory's claims and has otherwise failed to acknowledge it's insuring obligations to Armory.

46. By failing to acknowledge their obligations under the Policy and pay Armory's claim, Philadelphia is liable for breach of contract. As a direct result of Philadelphia's breach of contract, Armory is entitled to damages in excess of \$50,000.00 in an amount to be determined at trial.

WHEREFORE, Armory prays for judgment against Philadelphia as follows:

1. A declaratory judgment declaring that Philadelphia's denial of coverage was wrongful and a breach of Philadelphia's duties under the Policy;
2. A declaratory judgment declaring that Philadelphia has a duty to provide coverage to Armory as required by the Policy;
3. An award of damages in favor of Armory of the full policy limits;
4. An award of costs and fees incurred in pursuing this action;
5. Any and other further equitable relief as deemed just by the Court.

HELLMUTH & JOHNSON, PLLC

Dated: February 14, 2022

By: /s/ Patrisha M. Garger
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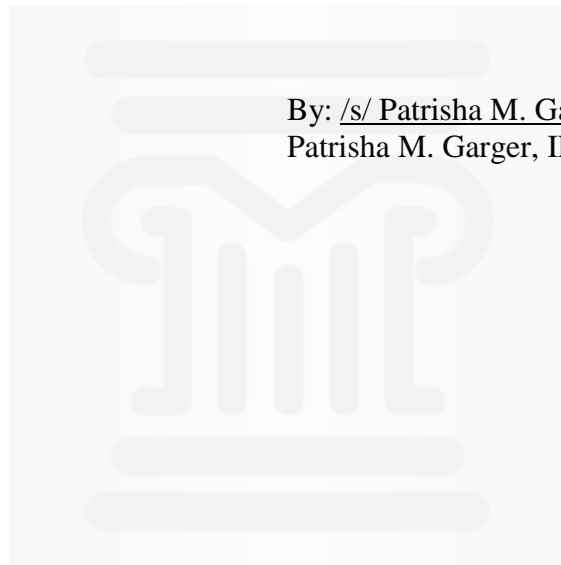
ATTORNEYS FOR PLAINTIFFS

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minnesota Statutes §549.211, to the party against whom the allegations in this pleading are asserted.

Dated: February 14, 2022

By: /s/ Patrisha M. Garger
Patrisha M. Garger, ID #0401741



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