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COOK COUNTY, IL
2020CH03843

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

MAILLARD TAVERN, LLC,

Plaintiffs

vs.

SOCIETY INSURANCE, INC.

Defendant

9077595

Case Number: 2020CH03843

Jury Demand

COMPLAINT AND REQUEST FOR DECLARATORY RELIEF

Plaintiff, MAILLARD TAVERN, LLC, by and through undersigned counsel, states as follows for its Complaint and Request for Declaratory Relief against the defendant SOCIETY INSURANCE, INC.:

I. INTRODUCTION

Plaintiff Maillard Tavern, LLC bring this action against Society Insurance, Inc., for its failure to honor its obligations under the commercial businessowners insurance policy issued to it. Plaintiff made premium payments expecting in its time of need, Society Insurance would make good on its contractual obligations under the policy they wrote and issued. Then last month, Plaintiff was forced to shut down its business due to the COVID-19 pandemic. Specifically, on March 15, 2020, during the term of the policy issued by Society Insurance to Plaintiff, Illinois Governor Pritzker issued an order first closing all restaurants and bars to the public in an effort to address the pandemic.

Clearly, the losses plaintiff sustained are through no fault of its own; rather, they are part of the State's efforts to slow the spread of the COVID-19 global pandemic. To protect its businesses, including its employees, from a situation like this, plaintiff procured business interruption insurance from Society Insurance. In pertinent part, the policy was intended to provide coverage – and in fact does provide coverage – for losses incurred due to a “necessary suspension” of its operations, including when its businesses are forced to close due to a government order. But despite Society Insurance's express promise in its policy to cover the plaintiff's business interruption losses when the government forces them to close, Society Insurance has failed to pay claims.

As a result of Society Insurance's failure to pay plaintiff's 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 MAILLARD TAVERN, LLC (“Plaintiff”), is a limited liability corporation organized under Illinois law with its principal place of business in Chicago, Cook County, Illinois.

2. Plaintiff is the owner and operator Maillard Tavern located at 494 North Milwaukee Ave., Chicago, IL 60654.

3. Defendant Society Insurance, Inc. (“Society”) is an insurance company engaged in the business of selling insurance contracts to commercial entities such as Plaintiffs in Illinois and elsewhere. Society Insurance is incorporated in the State of Wisconsin and maintains its principal place of business in Wisconsin.

4. Defendant Society 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. 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

5. At all times relevant, Society insured Plaintiff pursuant to an insurance policy drafted by Society.

6. Maillard Tavern, LLC is insured pursuant to policy number BP17030704-2. A copy of the policy is attached as Exhibit 1.

7. 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.

6. Relevant portions of the Policy provide, subject to other Policy terms, that Defendant Society will:

- a. “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 covered property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss;” and

- b. “pay for loss of Business Income that you sustain during the “period of restoration” and that occurs within 12 consecutive months after the date of direct physical loss or damage.”; and
- c. “[w]hen a Covered Cause of Loss causes damage to property other than property at the described premises, we 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 premises...”

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

9. While the Policy was in force, Plaintiff sustained, and continues to sustain, losses due to COVID-19 at, in, on, and/or around Plaintiffs’ premises described in the Policy.

10. While the Policy was in force, Plaintiff sustained, and continues to sustain, losses due to the spread of COVID-19 in the community (the “Pandemic”).

11. While the Policy was in force, Plaintiff sustained, and continues to sustain, loss due to the civil authority orders issued by the Governor of Illinois and the Illinois Department of Health addressing COVID-19 and the Pandemic.

B. The COVID-19 Virus

- 12. COVID-19 is a virus.
- 13. COVID-19 is a physical substance.
- 14. COVID-19 is a human pathogen.
- 15. COVID-19 can be present outside the human body in viral fluid particles.

16. COVID-19 can and does live on and/or remains capable of being transmitted and active on inert physical surfaces.

17. COVID-19 can and does live on and/or remains capable of being transmitted and active on floors, walls, furniture, desks, tables, chairs, countertops, computer keyboards, touch screens, cardboard packages, food items, silverware, plates, serving trays, glasses, straws, menus, pots, pans, kitchen utensils, faucets, refrigerators, freezers, and other items of property for a period of time.

18. COVID-19 can be transmitted by way of human contact with surfaces and items of physical property on which COVID-19 particles are physically present.

19. COVID-19 has been transmitted by way of human contact with surfaces and items of physical property located at premises in Cook County.

20. COVID-19 has been transmitted by human to human contact and interaction at premises in Cook County, including places like bars and restaurants.

21. COVID-19 can be transmitted through airborne viral particles emitted into the air at premises.

22. COVID-19 has been transmitted by way of human contact with airborne COVID-19 particles emitted into the air at premises in Cook County.

23. The presence of any COVID-19 particles renders items of physical property unsafe.

24. The presence of any COVID-19 particles on physical property impairs its value, usefulness and/or normal function.

25. The presence of any COVID-19 particles causes direct physical harm to property.

26. The presence of any COVID-19 particles causes direct physical loss to property.

27. The presence of any COVID-19 particles causes direct physical damage to property.

28. The presence of any COVID-19 particles at premises renders the premises unsafe, thereby impairing the premises' value, usefulness and/or normal function.

29. The presence of people infected with or carrying COVID-19 particles renders physical property in their vicinity unsafe and unusable, resulting in direct physical loss to that property.

30. The presence of people infected with or carrying COVID-19 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 COVID-19

31. In response to COVID-19 and the 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.

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

33. Similarly, the City of Chicago, pursuant to its authority, has issued orders, including curfew orders on all liquor sales across Chicago.

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

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

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

37. The City of Chicago is a civil authority as contemplated by the Policy.

38. The Mayor of Chicago is a civil authority as contemplated by the Policy.

39. On March 11, 2020, the World Health Organization characterized the COVID-19 outbreak as a pandemic.

40. On March 15, 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.” With this goal in mind, Governor Pritzker ordered that all bars and restaurants close to the public effective March 16, 2020 to March 30, 2020 (later extended to April 30, 2020 per COVID-19 Executive Order No. 16) and prohibiting all public and private gatherings of 50 people or more, in addition other strict mandates. This order was in response to the physical presence of COVID-19 and the Pandemic.

41. The stated goal of this order was to slow the spread of COVID-19 by minimizing in-person interaction in an environment with “frequently used services in public settings, including bars and restaurants...” The March 15th order further

provided that “the ongoing spread of COVID-19 and the danger the virus poses to the public’s health and wellness require the reduction of on-premises consumption of food and beverages.”

42. On March 20, 2020, Governor Pritzker 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 Plaintiffs’ premises.

43. Like the March 16, 2020 Closure Order, the March 20, 2020 Order prohibited the public from accessing Plaintiffs’ restaurants, thereby causing the necessary suspension of their operations and triggering the Civil Authority coverage under the Policy.

44. On March 26, 2020, Chicago Mayor Lori Lightfoot shut down Chicago’s most popular gathering spots, including the entire lakefront and all its parks, bike trails and beaches.

45. On April 8, 2020, Mayor Lightfoot issued a sweeping curfew order, with no definite end date, on all liquor sales across Chicago, banning sales after 9:00 p.m.

D. Illinois’ Exercise of Civil Authority Closes Plaintiffs’ Businesses

46. Plaintiff’s business does not qualify as Essential Businesses and was required to cease and/or significantly reduce operations at all its location.

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

48. 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 COVID-19 and the 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 Policy.

49. State and local governmental authorities, and public health officials around the Country, acknowledge that COVID-19 and the 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).
50. COVID-19 and the Pandemic are physically impacting public and private property in Illinois and throughout the country.
51. COVID-19 and the Pandemic have caused and continue to cause direct physical loss and damage to property.
52. People in Cook County have been diagnosed with COVID-19.
53. People in Cook County have, and have had, COVID-19 disease but have not been diagnosed.
54. People in Cook County have COVID-19 particles on or about their person and personal property.
55. Properties and premises throughout Cook County contain the presence of COVID-19 particles on surfaces and items of property.

56. It is probable that COVID-19 particles have been physically present at Plaintiff's premises described in the Policy during the time the policy was in effect.

57. It is probable that COVID-19 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 was in effect.

58. It is probable that airborne COVID-19 particles have been physically present at Plaintiff's premises described in the Policy during the time the policy was in effect.

59. It is probable that people carrying COVID-19 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.

60. It is probable that airborne COVID-19 particles have been physically present at Plaintiff's premises described in the Policy during the time the policy was in effect.

61. 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.

62. Plaintiff submitted a timely insurance claim to Defendant Society.

63. Defendant Society has denied Plaintiff's claim.

64. 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.

65. Plaintiff is entitled to and demands a declaration that:
- a. Plaintiff sustained direct physical loss or damage to property at its premises described in the Policy as a result of COVID-19 and/or the Pandemic;
 - b. COVID-19 is a covered cause of loss under the Policy;
 - c. the Pandemic is a covered cause of loss under the Policy;
 - 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 Policy;
 - e. Defendant Society has not and cannot prove the application of any exclusion or limitation to the coverage for Plaintiff's losses alleged herein;
 - f. Plaintiff is entitled to coverage for its past and future Business Income loss(es) and Extra Expense resulting from COVID-19 and/or the Pandemic for the time period set forth in the Policy;
 - g. Plaintiff is entitled to coverage for loss(es) due to the actions of Illinois's 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 its 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.

66. Plaintiff does not seek a determination of its damages resulting from COVID-19 and/or the pandemic. If there is a dispute between the parties as to the amount of the loss, the Policy provides that such a dispute should be resolved by

Appraisal:

Appraisal

If we and you disagree on the amount of “Business Income” or Extra Expense “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 amount of “Business Income” or Extra Expense “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.

If there is an appraisal, we still retain our right to deny the claim.
(TBP2 05-15)

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

68. 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 Society, 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: April 14, 2020

Respectfully Submitted,

By: /s/ Antonio M. Romanucci
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