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DR. CONSTANTINE ROSSAKIS
MD, PC,

Plaintiff(s),

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO.:

CIVIL ACTION

v.

LIBERTY MUTUAL INSURANCE
COMPANY,

Defendant(s).

COMPLAINT FOR
DECLARATORY JUDGMENT

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Plaintiff, Dr. Constantine Rossakis MD, PC (hereinafter “Rossakis”) a New Jersey limited liability company (“Plaintiff”), sues Defendant, Liberty Mutual Insurance Company (Insurance Company) (“Defendant”), for declaratory relief and alleges as follows:

PARTIES

1. Plaintiff, Dr. Constantine Rossakis, MD, PC is a New Jersey professional association with its principal place of business at 25 East Spring Valley Avenue, Maywood New Jersey 07607 (“The Property”).
2. Plaintiff owns, operates, manages and/or controls a physicians medical office located at the above address along with a satellite office located at 39 Sycamore Avenue, Little Silver New Jersey 07739.

JURISDICTION

3. Defendant Liberty Mutual Insurance is upon information and belief, a corporation with its principal place of business at 175 Berkeley Street, Boston Massachusetts 02116. Defendant is authorized to do business and is doing business in New Jersey. Defendant is transacting the business of insurance in the State of New Jersey and the basis of this suit arises out of such conduct.
4. This Court has jurisdiction over this action for declaratory relief pursuant to the laws of the State of New Jersey.

VENUE

5. In this case, Plaintiff is seeking a declaration finding that, *inter alia*, the subject insurance policy provides insurance coverage for Plaintiff relating to loss due to recent events including but not limited to, the Coronavirus (COVID-19), and/or government closures.
6. Pursuant to New Jersey law, the Court has personal jurisdiction over Defendant because it is a non-resident entity that personally or through an agent contracted to insure a person, property, or risk located within the State of New Jersey at the time of contracting, and Defendant thereby submitted to the jurisdiction of the courts of the State of New Jersey for any cause of action arising from such contracting to insure.
7. Venue is proper in this Court because the Plaintiff's business and property as issue are located within the venue of this Court in Bergen County. Plaintiff entered into the subject insurance policy in New Jersey, the subject insurance policy provides insurance to Plaintiff and its property located in New Jersey and pursuant to the policy, the insured premise is located in New Jersey.

FACTS

8. Defendant issued a Commercial Property Insurance Policy, being policy number BZO (20) 52 48 70 71 with effective dates of 9/22/2019 through 09/22/2020 (the “Policy”). A true and correct copy of the Declaration Page of the Policy is attached hereto as **Exhibit “A”**.
9. The aforementioned medical offices (the “Property”), is listed as an insured premise under the Policy.
10. Plaintiff faithfully paid all Policy premiums to Defendant.
11. The Policy is currently in full effect, providing commercial property coverage, improvements and betterments coverage, building and personal property coverage, business income and extra expense coverage, and additional coverages.
12. The Policy provides for coverage for direct physical loss or damage to covered property at the insured premise.
13. The Policy provides coverage for direct physical loss unless the loss is excluded or limited in the Policy.
14. The Policy does **not** provide any exclusion due to losses to business or property.
15. The State of New Jersey issued an executive order declaring a State of Emergency in New Jersey on March 9, 2020. As a direct and proximate result of the foregoing and as a further result of other subsequent Executive Orders, Plaintiff will suffer a loss of business and will continue to do so for the foreseeable future.
16. Commencing on or about March 9, 2020 Plaintiff was subject to a business interruption, loss of service, as a result of the Coronavirus (COVID-19), and/or government closures.

17. As a direct and proximate result of recent events including but not limited to, the Coronavirus (COVID-19), and/or government closures, Plaintiff's business was interrupted, and business income was lost.
18. Plaintiff's interruption of its medical business, and loss of business income, is continuing and will continue for the foreseeable future.
19. At all material times, there is and has been directly physical loss of or damage to covered property at the insured premise caused by or resulting from any covered cause of loss.
20. Plaintiff timely provided to Defendant notice of claim under all applicable provisions of the Policy. Specifically, on or about April 23, 2020, Plaintiff provided notice of claim to Defendant.
21. Defendant received the Claim submitted by Plaintiff on or about April 23, 2020.
22. On or about April 23, 2020, Defendant's agent, Mr. Kane acknowledged receipt of the Claim and assigned Claim No.: 23809858 to the Claim.
23. Defendant denied Plaintiff's claim.
24. Due to the nature of Plaintiff's claim submitted to Defendant, time is of the essence. Under these circumstances, the prompt, orderly, and efficient payment of Plaintiff's Claim under the Policy is required.
25. As a direct and proximate result of recent events including but not limited to, the Coronavirus (COVID-19), and/or government closures, Plaintiff has incurred, and continues to incur, a substantial loss of business income, additional expenses, loss of use of the Property, business interruption, property damage, perishable goods, and service interruption, covered under the Policy.

26. Plaintiff seeks a declaratory judgment that the recent events including but not limited to, the Coronavirus (COVID-19), and/or government closures, have triggered coverage under the Policy because, *inter alia*, the Policy does not have an exclusion for viral pandemic.
27. Plaintiff has engaged the undersigned counsel to represent it in this action and has agreed to pay a reasonable fee for the services rendered. Plaintiff seeks its attorney's fees and costs.
28. All conditions precedent to bringing this action have been performed, waived, satisfied, or have otherwise occurred.

COUNT I – DECLARATORY RELIEF

29. Plaintiff realleges and reasserts the allegations contained in Paragraphs 1 through 28 as if fully set forth herein.
30. Plaintiff seeks declaratory relief under the New Jersey Declaratory Judgment Act NJSA 2A:16-50 et. seq.
31. A current dispute exists between the Plaintiff and Defendant as to whether the Policy provides coverage for Plaintiff due to recent events including but not limited to, the Coronavirus (COVID-19), and/or government closures.
32. The Policy fully and completely provides coverage for Plaintiff's Claim.
 - a. Plaintiff is interested and/or in doubt about its rights under the Policy, and seeks determination by the Court of a question of construction arising under the Policy and to obtain a declaration of Plaintiff's rights, status, or other equitable or legal relations under the Policy.
33. There is a bona fide dispute between the parties and an actual, present and practical need for a declaration as to whether the Policy provides coverage for Plaintiff's Claim.

COUNT II-BREACH OF CONTRACT

34. Plaintiff repeats and reassert the allegations contained in Paragraphs 1 through 33 as if fully set forth herein.

35. By virtue of the Defendants denial of Plaintiff's claim Defendant has breached its unlawfully contract of insurance.

36. As a result thereof, Plaintiff has and will continue to suffer damages.

CERTIFICATION PURSUANT TO RULE 4:5-1 AND 4:6-1

I hereby certify to the best of my knowledge and belief:

1. The matter in controversy in this action is not the subject of any other pending action.
2. No other arbitration proceeding is currently contemplated.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all damage claims.

DESIGNATION OF TRIAL COUNSEL

Francis J. DeVito, Esq., is hereby designated as trial counsel.

WHEREFORE, Plaintiff demands judgment against the Defendant as follows:

- A. Declaring that the policy of insurance in this matter does in fact provide coverage to the Plaintiff under the circumstances of this matter;
- B. For damages, both compensatory and punitive;

C. For attorney fees and costs; and

D. For such other relief as the Court deems fair and equitable.

FRANCIS J. DeVITO, P.A.

Attorney for Plaintiff

By: *Francis J. DeVito*

Francis J. DeVito

Dated: April 30, 2020