

COMMONWEALTH OF KENTUCKY
McCRACKEN COUNTY CIRCUIT COURT
DIVISION ____
CASE NO. _____

CARLA BRADFORD D/B/A THE PARTY :
SHOP, :
2414 New Hope Road :
Paducah, KY 42001-7455 :

Plaintiff, :

v. :

STATE FARM FIRE & CASUALTY :
COMPANY, a stock company with :
home offices in Bloomington, Illinois, :
3 Ravinia Drive :
Atlanta, GA 30346-2117 :

Defendant. :

Electronically Filed

COMPLAINT FOR
DECLARATORY JUDGMENT
AND JURY DEMAND

I. INTRODUCTION

1. This is a lawsuit for declaratory judgment filed pursuant to Section 418.005, *et seq.*, of the Kentucky Revised Statutes (“KRS”) and pursuant to Kentucky Civil Rule 57. The Plaintiff made a claim for the loss of business income which it sustained as a result of a “shutdown order” issued by the Governor of the Commonwealth of Kentucky on or about March 25, 2020. See Exhibit 1 attached.

2. As described in more detail hereafter, the Plaintiff made a claim for loss of business income due to its compliance with the Kentucky order. See Exhibit 2 attached. The Defendant, State Farm Fire & Casualty Company (“State Farm” or “the insurer”), has not responded to the Plaintiff’s claim.

Presiding Judge: HON. W. A. KITCHEN (602373)

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II. PARTIES

3. The Plaintiff, Carla Bradford d/b/a The Party Shop, operates a retail business in Paducah, Kentucky. The Party Shop sells party invitations, party supplies, balloons and items used at parties.

4. The Defendant, State Farm, is an insurer based in Illinois with an office in Atlanta, Georgia. It issues business insurance policies throughout the Commonwealth of Kentucky through appointed agents who regularly sell policies in Kentucky, and specifically in McCracken County, Kentucky.

III. THE PREVALENCE OF THE COVID-19 VIRUS IN KENTUCKY AND THE RESPONSE OF THE KENTUCKY CIVIL AUTHORITY

5. As of March 6, 2020, the Governor of Kentucky, recognizing the widespread prevalence of the COVID-19 virus in the Commonwealth of Kentucky, and the dangerous and deadly nature of that virus, declared a state of emergency. As of May 6, 2020, there were over 5,800 confirmed cases of the COVID-19 virus in the Commonwealth of Kentucky, including no less than 63 cases in McCracken County, Kentucky.

6. Because of the widespread, dangerous and deadly nature of the virus, the Governor issued the shutdown (aka the stay-at-home) order on March 25, 2020. See Exhibit 1 attached.

IV. THE INSURANCE POLICY

7. The relevant part of the policy that is at issue in this declaratory judgment action is attached hereto as Exhibit 3.

8. The policy provides coverage for loss of business income arising from an interruption of the Plaintiff's business caused by an order from a civil authority (a government official). The precise language is as follows:

... We will pay for the actual "loss of income" you sustain ... caused by action of civil authority that prohibits access to this described premises (the insured's premises).

9. The damage to someone else's property – that causes action by the civil authority – must be property located within one mile of the insured's premises, and the action of the civil authority must be taken in response to a dangerous physical condition.

10. At the time Plaintiff submitted a claim to the Defendant, the Defendant was well aware the shutdown order (Exhibit 1) had been entered because of the widespread nature of COVID-19, an airborne virus, throughout the Commonwealth of Kentucky.

11. In summary, at the time the Plaintiff made its claim, the Defendant was well aware that:

- Plaintiff had insurance for loss of "business income";
- There is insurance for loss of "business income" if that loss results from the action of a "civil authority" (a government agency);
- The action of the civil authority need not be based upon damage to the insured's property, but may be based upon damage to other property within one mile of the insured's premises;
- There was evidence of such property damage, as the presence of the virus in the air and on surfaces may constitute property damage; and
- There was evidence of a widespread presence of the virus throughout the Commonwealth of Kentucky and in Paducah, Kentucky, and there was evidence that the presence of the virus constituted a dangerous physical condition.

12. With full knowledge of the policy provisions summarized above, the Defendant failed to respond to the Plaintiff's claim.

V. DECLARATORY JUDGMENT – THE ISSUES

13. Section 418.040 of the KRS provides that the Court may enter declaratory judgment declaring the rights of the parties herein. Rule 57 of the Kentucky Rules of Civil Procedure provides for a jury trial for any factual issues in a declaratory judgment action.

14. The Plaintiff respectfully submits to the Court that there are several issues raised by the Plaintiff's claim, and the insurance company's failure to respond to that claim, that are appropriate for a declaratory judgment at this time. Those issues are as follows:

- Whether the presence of the virus constitutes damage to property or to applicable legal authorities; and
- Whether there is coverage under the terms of the policy issued by State Farm because of the widespread presence of the virus throughout the Commonwealth and throughout Paducah and McCracken County, Kentucky.

15. The Plaintiff further submits to the Court that the facts and the case law will support a finding in favor of the Plaintiff on each of the above issues. Thus, the Court should render declaratory judgment that the Plaintiff has coverage for the Plaintiff's losses of business income under the terms of the Plaintiff's policy.

VI. DAMAGES

16. Should the Court render declaratory judgment on the coverage issue, in favor of the Plaintiff, the Plaintiff does not seek the Court's determination or an award of damages at this time.

17. The policy issued by the Defendant contains a form "appraisal" clause. That clause permits each party to select an appraiser, and then the two appraisers

select an umpire. The persons who act as appraisers are normally adjusters, acting on behalf of the company, and a public adjuster employed by the insured.

18. Should the Court grant declaratory judgment in the Plaintiff's favor on the coverage issue, the Plaintiff will first seek to negotiate, in good faith, with the insurance company in an effort to arrive at a mutually acceptable figure for the loss of business income. If such good faith negotiation does not produce a result, then the Plaintiff will invoke the appraisal process to get a damage determination.

WHEREFORE, in consideration of the foregoing, the Plaintiff requests that the Court grant declaratory judgment in favor of the Plaintiff and order that the Plaintiff has insurance coverage, to be provided by the Defendant State Farm for the Plaintiff's loss of business income arising from the action of a civil authority, the Governor of Kentucky. The Plaintiff further requests all other proper and appropriate relief including costs and, if provided by law, its attorneys' fees not to exceed \$70,000.00.

JURY DEMAND

Pursuant to the provisions of Kentucky Civil Rule 57, the Plaintiff demands trial by jury on any factual issues in this declaratory judgment action.

Dated this ____ day of June, 2020.

Respectfully submitted,

/s/ Mark P. Bryant
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