

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.

ALLIED STEEL BUILDINGS, INC.,
a Florida corporation,

Plaintiff,

v.

INDIAN HARBOR INSURANCE COMPANY,
a Delaware corporation, HDI GLOBAL
SPECIALTY SE, a German company, and
CERTAIN UNDERWRITERS AT LLOYD'S
LONDON, KNOWN AS SYNDICATES
5151 (ENH), 2468 (NEO), 2003 (XLC),
1183 (TAL), 5000 (TRV), 3268 (AGR),
1856 (ACS), 2007 (NVA), 382 (HDU)
1980 (PPP), 2003 (XLC), 1200 (AMA),
1856 (ACS), 1414 (ASC) and 5678 (VSM),

Defendants.

COMPLAINT

Plaintiff, Allied Steel Buildings, Inc. (“Allied Steel”) sues Defendants Indian Harbor Insurance Company, HDI Global Specialty SE, and Certain Underwriters at Lloyd’s London, known as Syndicates 5151 (ENH), 2468 (NEO), 2003 (XLC), 1183 (TAL), 5000 (TRV), 3268 (AGR), 1856 (ACS), 2007 (NVA), 382 (HDU), 1980 (PPP), 2003 (XLC), 1200 (AMA), 1856 (ACS), 1414 (ASC) and 5678 (VSM) (collectively “Underwriter Defendants”) and states:

JURISDICTION, PARTIES AND VENUE

1. This is a civil action for breach of an insurance contract, costs, and attorneys’ fees in excess of Thirty Thousand Dollars (\$30,000.00).

2. Plaintiff Allied Steel is a Florida corporation located in Ft. Lauderdale, Florida that designs, engineers, markets and sells prefabricated steel buildings to domestic and foreign customers.

3. Defendant Indian Harbor Insurance Company is a Delaware corporation located in Hartford, Connecticut who participated in underwriting the Plaintiff's commercial insurance policy.

4. Defendant HDI Global Specialty SE is a German insurance company located in Hannover, Germany who participated in underwriting the Plaintiff's commercial insurance policy.

5. Defendant Certain Underwriters at Lloyd's London, known as Syndicates 5151 (ENH), 2468 (NEO), 2003 (XLC), 1183 (TAL), 5000 (TRV), 3268 (AGR), 1856 (ACS), 2007 (NVA), 382 (HDU) 1980 (PPP), 2003 (XLC), 1200 (AMA), 1856 (ACS), 1414 (ASC) and 5678 (VSM) are located in various unknown locations who each participated in underwriting the Plaintiff's commercial insurance policy.

6. Venue lies in Broward County, Florida pursuant to Fla. Stat. § 47.051 because this is where the cause of action accrued, where the insurance contract was sent, and where the insured property is located. *See also* Fla. Stat. § 47.011; Fla. Stat. § 47.041.

7. This Court has personal jurisdiction over Underwriter Defendants pursuant to Fla. Stat. § 48.193(1)(a) because Plaintiff's claim arises out of Underwriter Defendants conducting, engaging in and carrying on business in Florida; Underwriter Defendants breached an insurance contract in Florida by failing to perform their contractual obligations that the insurance contract requires to be performed in Florida; and Underwriters contracted to insure Plaintiff's business located in Florida at issue in this action.

8. All conditions precedent to this action have occurred, have been performed or have been waived.

FACTS

A. Background

9. People and businesses buy insurance to help themselves when disaster occurs.

10. People and businesses know that they are at their most vulnerable and desperate condition in the wake of disasters like the current pandemic. Insurance companies know it too.

11. Unlike most other types of commercial contracts, the insurance contract contains mutual obligations.

12. The insurance companies, including Underwriter Defendants herein, promise that they will provide money when most needed after a covered loss in the event of a disaster.

13. The insurance companies, including Underwriter Defendants herein, promise, warrant and sell “peace of mind” that in the unlikely event of a catastrophe or disaster such as a pandemic the policy holder will be fully and promptly indemnified.

14. For years and even decades, the vast majority of people and businesses that carry business interruption insurance have faithfully paid their premiums and have never made a claim. Now that there is a catastrophic business interruption caused by a national healthcare disaster and COVID-19 pandemic emergency and government-ordered business shutdowns, their claims are denied. Like Plaintiff, many people and businesses are relying on their business interruption insurance to cover what it is supposed to cover – loss of income and ongoing expenses – to get through this crisis and rebuild their businesses.

15. Plaintiff, like any business, is about commerce that involves hiring employees, contracting with suppliers and selling to customers. The business counts on current income and future income from operations to remain operational, and insurance coverage when operations are suspended due to disasters.

16. Policyholders are dependent on performance by the insurance company when they are most vulnerable. Dependence here arises from the policyholders' financial desperation combined with a state of mind focused on managing the fallout from the disaster.

17. When the insurance company fails to fulfill its obligations timely and completely, the policyholder suffers contractual damages and harm to the existence of its business.

18. In order to protect its business and its income from losses, Plaintiff obtained an insurance policy (the "Policy") issued by Underwriter Defendants.

19. Plaintiff purchased a commercial property policy with policy number AVS 011427500, effective May 1, 2019 to May 2020. *See* Exhibit A. The Policy protects against, among other risks, business income losses and extra expenses that result from an involuntary interruption of business operations.

20. The Policy insures Plaintiff's business income from its business operations, which is based on sale of its prefabricated steel buildings. The Policy is in full effect as Plaintiff has faithfully paid the premiums due which Underwriter Defendants accepted.

21. The Policy is a contract whereby Plaintiff agreed to pay monthly premiums in exchange for Underwriter Defendants' promises of coverage for losses, including losses due to the involuntary suspension of its business operations.

22. Beginning in March 2020, Plaintiff was forced to suspend business operations as a result of the national healthcare crisis and national emergency proclaimed to deal with the strain placed on the nation's healthcare system from the COVID-19 pandemic and resultant civil authority orders, which closed and prohibited access to non-essential businesses including Plaintiff's business operations, and those that supply materials to Plaintiff and those who purchase Plaintiff's products, in order to prevent workers, vendors, suppliers and customers from becoming endangered by contact with other people. These ongoing suspensions have caused Plaintiff to suffer significant income losses and incur significant expenses.

23. Specifically, Underwriter Defendants are in breach by refusing coverage for the suspension of business that resulted from the national healthcare disaster and COVID-19 pandemic emergency. Underwriter Defendants are obligated under the Policy to cover and pay these losses and expenses but have refused to do so.

B. Relevant Policy Provisions

24. The Policy is an all-risk commercial output income insurance policy that provides coverage for physical loss of the insured business income from all risks unless expressly excluded by language in the body of the policy or through a separate exclusion endorsement. There is no exclusion in Plaintiff's Policy for business interruption caused by a natural disaster and the declaration of a national emergency and urgent lock down of non-essential businesses and at-home quarantine of the vast majority of the national and world population due to a global pandemic and need to lessen the strain on the nation's healthcare system by restricting access to places where the population can be exposed to this physically dangerous condition.

25. The Policy describes Plaintiff's property as "business income" for which it will pay for direct physical loss caused by or resulting from any cause of loss not excluded.

26. The business income coverage provides that Underwriter Defendants will pay for the actual loss of business income Plaintiff sustains due to the necessary suspension of its operations during a period of restoration which ends when business operations return to normal.

27. The Policy defines operations as Plaintiff's usual business operations occurring at the covered locations.

28. The Policy defines business income as "Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no physical loss had occurred...."

29. The Policy also provides for coverage for extended business income where the necessary suspension of operations produces a business income loss up to the time normal business operations resume.

30. The Policy includes coverage for extra expense, providing that Underwriter Defendants will pay the necessary expenses Plaintiff incurs that it would not have incurred if there had been no direct physical loss of the earnings.

31. The Policy includes coverage for actions of civil authority, providing that Underwriter Defendants will pay for the actual loss of business income and incurred extra expenses at the premises caused by the action of civil authority that prohibits access to Plaintiff's premises or a dependent location by order of a civil authority.

C. Plaintiff Has Suffered and Continues to Suffer a Loss Under the Policy

32. On March 9, 2020 Governor Ron DeSantis issued Executive Order 20-52 concerning the public health emergency posed by the COVID-19 pandemic, citing his authority to declare a state of emergency under Chapter 267 (1)(a), Florida Statutes which is intended to

provide emergency measures to protect residents from disasters that threaten life, health and safety and damage to property.

33. On March 13, 2020, President Donald Trump declared a national state of emergency over the COVID-19 pandemic, effective March 1, 2020, wherein he directed that “hospitals and medical facilities throughout the country assess their preparedness posture and be prepared to surge capacity and capability.”

34. On March 20, 2020 Governor DeSantis issued Executive Order 20-70, relating to the COVID-19 pandemic, closing restaurants in certain other South Florida counties (other than for deliveries and takeout), bars, taverns, pubs, night clubs, banquet halls, cocktail lounges, cafeterias, movie theaters, concert houses, auditoriums, playhouses, bowling alleys, arcades, gymnasiums, and fitness studios.

35. Following the proclamation of state and national emergencies, Broward County Administrator Bertha Henry issues a series of Emergency Orders from March 22, 2020 to April 28, 2020 (Emergency Orders 20-01 to 20-07) that closed or severely restricted non-essential businesses in Broward County. Likewise, Miami-Dade Mayor Carlos Giménez issued Emergency Orders 3-20, 7-20 and 9-20 severely restricting or closing non-essential businesses in the County, including hotels and other travel venues.

36. Then, on March 30, 2020 Governor DeSantis issued Executive Order 20-89, explicitly limiting access to businesses in South Florida:

I hereby order Miami-Dade County, Broward County, Palm Beach County and Monroe County to restrict public access to businesses and facilities deemed non-essential pursuant to the guidelines established by Miami-Dade County pursuant to its March 19, 2020 Emergency Order 07-20, and as modified by subsequent amendments and orders prior to the date of this order.

37. Other similar state and local civil authority orders have been issued that close or restrict access to all non-essential business operations or prohibit public access to the property of non-essential businesses where the individuals gather in close proximity to each other, in order to protect the public from the dangerous condition of contracting the respiratory illness named COVID-19.

38. The civil authority orders expressly state that the closing of non-essential businesses and social distancing restrictions placed on the public are necessary emergency measures to protect the health and safety of all residents in Florida due to the spread of COVID-19 through human-to-human and surface-to-human contact with the coronavirus.

39. The COVID-19 pandemic is a “natural disaster.” Like other specific disasters, such as hurricanes or earthquakes, it involves substantial damage to property, hardship, suffering, and loss of life.

40. Unsurprisingly, already, at least one State Supreme Court has recognized, in *Friends of DeVito v. Wolf*, that the damage caused by the COVID-19 pandemic is indistinguishable from those caused by earthquakes, fires and the other casualty events:

We agree with Respondents that the COVID-19 pandemic qualifies as a “natural disaster” under the Emergency Code...

2020 Pa. LEXIS 1987, at *31 (Pa. April 13, 2020).

41. Losses from disasters are what business income insurance coverage has always been intended to cover.

42. The nature of Plaintiff’s non-essential business is sale of its prefabricated steel buildings to customers around the world, and its premises are a place where individual employees gather in close proximity. The intended purpose of the business is to provide a safe environment for its employees.

43. As a direct result of the existence of the national COVID-19 emergency, and orders to close non-essential businesses in South Florida and throughout the country, Plaintiff's business premises became unsafe for employees and the public to use. Thus, Plaintiff suffered a physical loss of its business income and extra expenses. The loss continues.

44. Further, the civil authority actions closing non-essential business and restricting public movement with stay-at-home orders prevented employees and the public from accessing Plaintiff's business premises and the area surrounding it resulting from unsafe and dangerous physical conditions which caused a suspension of Plaintiff's business operations and loss of its business income. Over 75,000 cases of COVID-19 have been reported in the State of Florida and over 8,500 in Broward County. This shows that the population is vulnerable to contracting COVID-19 throughout the county, and that dangerous conditions permeate all property, including the areas surrounding Plaintiff's premises.

45. Specifically, the civil authority orders have denied Plaintiff access to the premises, prevented customers from physically occupying the premises, caused the premises to be physically uninhabitable by customers, caused its intended purpose and function to be nearly eliminated or destroyed, and caused the reduction of the majority of business operations throughout Florida.

D. Plaintiff Has Suffered and Continues to Suffer a Loss Under the Policy, But Was Denied Coverage

46. The business income losses Plaintiff has and continues to suffer, and the extra expenses Plaintiff has incurred are covered under the Policy, yet on May 12, 2020 Underwriter Defendants denied coverage despite Plaintiff's timely notice of its claim.

47. Due to the proclaimed national disaster, state and local state of emergency declarations, and related civil authority orders intended to keep the public safe, Plaintiff has suffered business income losses from the reduction and suspension of business operations, and has incurred extra expenses.

48. These losses and expenses have continued through the date of filing of this action as Plaintiff's business operations are curtailed by the inability to obtain materials from suppliers that remain shut down.

49. Plaintiff's lost business income and extra expenses due to a natural disaster are covered under the Policy, are not limited and have not been excluded from coverage. Plaintiff is entitled to be indemnified by Underwriter Defendants for its business income losses and expenses incurred.

50. Thus, Underwriter Defendants are in breach of the Policy for denying coverage.

COUNT I

BREACH OF CONTRACT

51. Plaintiff incorporates by reference paragraphs 1 – 50 as though fully set forth herein.

52. Plaintiff has a commercial output income insurance policy issued by Underwriter Defendants.

53. Plaintiff has performed all its obligations as specified by the Policy including the payment of all premiums due.

54. Plaintiff's Policy provides coverage for business income loss, extended business income loss, and extra expense for unexpected and unexcluded causes of loss.

55. As stated above, Plaintiff had to involuntarily close its non-essential business and cease or substantially reduce its operations due to the national healthcare disaster and COVID-19 emergency and resulting measures put in place by civil authority orders that closed supplier and customer locations, and thus has incurred substantial business income losses and extra expenses.

56. Underwriter Defendants denied and refused to provide coverage for Plaintiff's business income losses, and extra expenses.

57. As a result of Underwriter Defendants' breach of the Policy, Plaintiff has suffered actual damages.

WHEREFORE, Plaintiff seeks compensatory damages resulting from Underwriter Defendants' breach of contract, an appraisal to determine the amount of Plaintiff's damages, and further seeks all relief deemed appropriate by this Court, including attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Underwriter Defendants as follows:

- (1) Awarding Plaintiff compensatory damages from Underwriter Defendants' breach of the insurance contract in an amount to be determined at trial or appraisal ordered by this Court, together with appropriate prejudgment interest at the maximum rate allowable by law;
- (2) Awarding Plaintiff costs and disbursements and reasonable allowances for the fees of Plaintiff's experts, and reimbursement of expenses;
- (3) Awarding Plaintiff attorneys' fees pursuant to Fla. Stat. § 627.428; and
- (4) Awarding such other and further relief the Court deems just, proper, and equitable.

DEMAND FOR A JURY TRIAL

Plaintiff requests a jury trial for any and all Counts for which a trial by jury is permitted by law.

Respectfully submitted July 2, 2020.

/s/ Javier A. Lopez

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