

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CHICKEN KITCHEN USA, LLC

Plaintiff(s),

-against-

ZURICH AMERICAN INSURANCE COMPANY

Defendant(s).

Index No. [type in Index No]

Summons

Date Index No. Purchased:

To the above named Defendant(s)

Zurich American Insurance Company
4 World Trade Center, 150 Greenwich Street
New York, New York 10007

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is Defendant's corporate residence pursuant to CPLR 503 (c),
which is New York County, New York

Dated: September 30, 2020

VER PLOEG & MARINO, P.A.

by 

Alexander I. Loy

Attorneys for Plaintiff

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
CHICKEN KITCHEN USA, LLC,

Index No.

Plaintiff,

COMPLAINT

v.

ZURICH AMERICAN INSURANCE COMPANY,

Defendant.

-----X

COMPLAINT

Chicken Kitchen USA, LLC sues Zurich American Insurance Company, as follows:

NATURE OF THE ACTION

1. This is an action for declaratory judgment pursuant to CPLR 3001.
2. Chicken Kitchen seeks a determination that certain limits of insurance in a policy issued by Zurich are ambiguous in application under Florida law, and should be construed to apply to its restaurants on an individual basis rather than on a collective basis.

JURISDICTION AND VENUE

3. This Court has jurisdiction under CPLR 3001 because this action seeks a declaratory judgment over a justiciable controversy.
4. Venue is proper under CPLR 503 (c) because Zurich resides in New York County, New York.

THE PARTIES

5. Chicken Kitchen is a Florida limited liability corporation that owns and operates restaurants throughout Miami-Dade County and Broward County, Florida. Chicken Kitchen

collaborates with local food growers and farmers in order to provide healthy meal options for customers at its restaurants.

6. Zurich is a New York corporation with its principal place of business in New York, New York. At all material times, Zurich actively engaged in the business of selling insurance in Miami-Dade County, Florida.

GENERAL ALLEGATIONS

Chicken Kitchen's Policy

7. Zurich issued an all-risk Commercial Property Insurance Policy No. CPO 1067182-02 to Chicken Kitchen, with effective dates from November 8, 2019 through November 8, 2020 ("Policy"). The Policy was delivered to Chicken Kitchen in Miami, Florida and disputes under the Policy are governed by Florida law. A copy of the Policy is attached as Exhibit A.¹

8. The Policy covers eighteen of Chicken Kitchen's restaurants as scheduled in the Summary of Premises section of the Policy Declarations (the "Premises").² Sixteen of the Premises are located in Miami-Dade County, Florida and two of the Premises are located in Broward County, Florida.

Business Income and Microorganisms Coverage

9. The Premises have Business Income Coverage, including Additional Coverage for Microorganisms.

10. The Policy's Business Income Coverage provides:

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 a **"premises"** at which a Limit of Insurance is shown on the

¹ Chicken Kitchen expects a complete certified copy of the Policy to be produced in discovery.

² The Premises are numbered 1-21. Premises 1 and 17 are not implicated in this lawsuit, and there is no entry for Premises 13.

Declarations for Business Income. The loss or damage must be directly caused by a **“covered cause of loss”**. We will not pay more than the applicable Limit of Insurance shown on the Declarations for Business Income at that **“premises”**.

11. The Policy’s Microorganisms Coverage provides:

We will pay for the actual loss of **“business income”** you sustain due to the:

- a. Necessary **“suspension”** of your **“operations”** from direct physical loss of or damage to Covered Property caused by **“microorganisms”** when the **“microorganisms”** are the result of a **“covered cause of loss”**; or
- b. Prolonged **“period of restoration”** due to the remediation of **“microorganisms”** from a covered loss.

12. The Policy defines “Microorganisms” as “any type or form of organism or microscopic or ultramicroscopic size including, but not limited to, ‘fungus’, wet or dry rot, virus, algae, or bacteria, or any by-product.”

Relevant Limits of Insurance

13. Each of the Premises has a Business Income Coverage Limit of Insurance ranging from \$150,000 to \$390,000 per location.

14. The Policy’s Additional Coverages -- Limits of Insurance apply as follows:

Limits of Insurance applicable at a **“premises”** that differ from those indicated below will be shown under the Summary of Premises section of this Declaration for that **“premises”**. Those Limits of Insurance replace, and are not in addition to, the Limits of Insurance shown below for those specified coverages and **“premises”**. If any Additional Coverage do not apply to any specific **“premises”**, the limit of Insurance will show as Not Covered for those **“premises”**. (Emphasis added).

15. The Limit of Insurance shown for Microorganism--Business Income is **“\$25,000 ANNUAL AGGREGATE.”**

Chicken Kitchen's COVID-19 Insurance Claim

16. Chicken Kitchen's insurance claim arises from the Novel Coronavirus Disease 2019 ("COVID-19") global pandemic, which continues to threaten persons and property in Miami-Dade County, Florida.

17. COVID-19 is an infectious disease caused by SARS-CoV-2, a highly contagious virus that causes a variety of symptoms, including severe respiratory illness.

18. SARS-CoV-2 constitutes a "microorganism" under the Policy.

19. Humans infected with COVID-19 expel respiratory droplets that contain SARS-CoV-2. These respiratory droplets attach to and contaminate surfaces or objects. Coronavirus contamination on surfaces or objects persists over time.

20. COVID-19 may also be transmitted by inhaling respiratory droplets that contain SARS-CoV-2. These droplets linger in the air before descending on to surfaces or objects.

21. Real and personal property at or near each of the Premises was contaminated with SARS-CoV-2 during the Policy period.

22. At all relevant times, SARS-CoV-2 contamination devalued Chicken Kitchen's real and personal property by rendering such property unsafe for use and/or occupation. At least four of Chicken Kitchen's employees tested positive for COVID-19.

23. Beginning in early March 2020, due to SARS-CoV-2 contamination, the immediate risk of further contamination, and applicable governmental orders placing restrictions on businesses and private activity, Chicken Kitchen suspended operations at each of its Premises by discontinuing on-premises dining. Customers were denied access to the Premises.

24. Due to the necessary suspension of operations at its Premises, Chicken Kitchen suffered actual losses of business income and incurred extra expenses.

25. Chicken Kitchen provided Zurich with timely notice of the loss on August 18, 2020.

26. Chicken Kitchen retained the undersigned to represent its interests in this matter and agreed to pay a reasonable fee for legal services rendered.

27. All conditions precedent to bringing this action were performed, waived, or otherwise occurred.

COUNT I – DECLARATORY JUDGMENT

28. Chicken Kitchen incorporates Paragraphs 1 through 27 as though fully set forth herein.

29. Pursuant to CPLR 3001, Chicken Kitchen seeks this Court’s declaration concerning the parties’ rights, duties, and responsibilities under the Policy with respect to Chicken Kitchen’s COVID-19 claim.

30. There is a bona fide justiciable controversy between Chicken Kitchen and Zurich concerning the insurance coverage that applies to this claim.

31. This Court should apply Florida law because the Policy was delivered to Chicken Kitchen in Florida and the circumstances underlying Chicken Kitchen’s insurance claim occurred in Florida.

32. Each of the Premises has a Business Income Limit of Insurance that “replace[s], and [is] not in addition to, the Limits of Insurance shown . . .” in the Additional Coverages -- Limits of Insurance.

33. The Policy indicates a Microorganisms--Business Income Limit of Insurance of \$25,000 ANNUAL AGGREGATE, but it is unclear whether this aggregate limit applies to each of the eighteen Premises individually or to all Premises collectively.

34. It is also unclear whether the Business Income Limit of Insurance for each Premises replaces or modifies the Microorganisms--Business Income Limit of Insurance.

WHEREFORE, Chicken Kitchen requests that this Court enter judgment declaring that the Microorganisms--Business Income Limit of Insurance applies to each of the eighteen Premises as an individual annual aggregate, together with any further relief this Court deems equitable, just, and proper.

Dated: September 30, 2020

Respectfully Submitted,

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