

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Copper West, LLC d/b/a Copper
River Grill,
Plaintiff,

vs.

Selective Insurance Company of the Southeast
and Selective Insurance Company of America,
Defendants.

CIVIL ACTION NO:

COMPLAINT

COMES NOW the Plaintiff, Copper West, LLC d/b/a Copper River Grill (hereinafter referred to as Copper River) complaining of the Defendants and herein alleges:

JURISDICTION

1. Plaintiff, Copper River, is a corporation organized and existing under the law of SC and doing business as a series of restaurants located in SC, GA, NC and Kentucky. Its main office and principal place of business is located in Boiling Springs, SC.
2. The Defendants, Selective Insurance Company of the Southeast and Selective Insurance Company of America (herein collectively referred to as Selective), are insurance companies who provide insurance coverages to individuals and businesses throughout the United States
3. Upon information and belief both Selective Southeast and Selective America are incorporated in states other than SC and there exists between the parties diversity of citizenship.
4. Furthermore, the amount in controversy exceeds 75,000.00 Dollars.

5. Upon information and belief Selective Southeast is a wholly owned subsidiary of Selective America and both jointly and severally provided the insurance coverage to Copper River which are the subject matter of this controversy.

6. This action is one for declaratory judgment pursuant to Section 15-53-10 et seq. of the SOUTH CAROLINA CODE OF LAWS, 1976, as amended. The action is brought to determine the applicability of certain insurance coverage provided by Selective to Copper River as it pertains to losses incurred by Copper River.

FACTS

7. Selective, jointly and severally, issued to Copper River a Commercial Policy of insurance bearing policy number S2372023 (the “policy”) with effective dates from January 1, 2020 to January 1, 2021. The policy provided numerous coverages for liability, property and business interruption losses including but not limited to coverages under policy provision generally designated under its Commercial Output Program.

8. Among other coverages provided, Selective insured Copper River for loss of income, food contamination, spoilage, and costs associated with crisis responses caused by “direct physical loss of or damage to property at covered locations...”

9. These coverages applied to all restaurant locations of Copper River.

10. On or about March 16, 2020, the government of South Carolina issued orders or proclamations that required Copper River to close its operations in all South Carolina restaurants. Within close proximity to this date, the States of Georgia, North Carolina, and Kentucky issued similar orders or proclamations requiring Copper River to close its restaurants in those states.

11. The orders or proclamations of each State were in response to the COVID-19 pandemic.

12. Copper River did not have any outbreak of or contamination of employees or customers at any of its restaurant locations and no customer or employee contracted or suffered from the COVID-19 coronavirus as a result of exposure at any of the Copper River places of business.

13. The losses incurred by Copper River, including but not limited to income loss, food contamination, spoilage, and cost associated with crisis response, were all a result of either physical loss or property damage at the covered location restaurants.

14. On March 25, 2020, Copper River placed Selective on notice of its initial and ongoing losses which it contended were covered under applicable provisions of the policy referenced above.

15. Selective has denied the applicability of its insurance coverages to the losses experienced to and to be experienced in the future by Copper River.

16. As a result, a justiciable controversy exists as to whether Selective owes to Copper River any money as a result of its insurance coverages provided under the Policy.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

17. The Plaintiff alleges and incorporates by reference, as fully set forth, all of the preceding paragraphs which are not inconsistent herewith.

18. This court should inquire into this matter which is a proper subject declaratory judgment under §§ 15-53-10, *et seq.*, of the SOUTH CAROLINA CODE OF LAWS and issue an order declaring that the aforementioned coverages are applicable to the losses incurred and to be incurred by Copper River; that further the court should award appropriate attorney's fees and costs for enforcing the insurance coverages and obligation of Selective under the Policy.

PRAYER FOR RELIEF

19. The Plaintiff alleges and incorporates by reference, as fully set forth, all of the preceding paragraphs which are not inconsistent herewith.

20. That, as a direct and proximate result of the aforementioned cause of action for declaratory relief, the Plaintiff prays for the following:

- a. This court inquire into this matter;
- b. The Court issue an Order finding that the aforementioned coverages are applicable to the losses incurred by Copper River;
- c. Award attorney's fees and costs; and
- d. Award such further relief that the Court may deem just and proper.

Respectfully submitted,

s/Douglas F. Patrick
Douglas F. Patrick, Federal Bar ID # 300
dpatrick@covpatlaw.com
Russell W. Patrick Federal Bar ID # 12208
rpatrick@covpatlaw.com
DOUGLAS F. PATRICK, PA
211 Pettigru Street
Greenville, SC 29601
(864) 242-9000
ATTORNEYS FOR THE PLAINTIFF

June 17, 2020
Greenville, SC