

Atty. Nos. 41106, 29143

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

FIRENZE VENTURES LLC, )  
d/b/a FIRENZE - ITALIAN )  
STREET FOOD, )  
on behalf of Plaintiff and a class, )

Plaintiff, )

v. )

TWIN CITY FIRE INSURANCE )  
COMPANY, d/b/a THE HARTFORD, )

Defendant. )

TRIAL BY JURY DEMANDED

**COMPLAINT – CLASS ACTION**

**INTRODUCTION**

1. Plaintiff Firenze Ventures LLC brings this action against Defendant Twin City Fire Insurance Company, d/b/a The Hartford (“Twin City”) to secure redress for the wrongful denial of coverage under business interruption insurance policies.

2. Plaintiff is the owner and operator of a restaurant in the Chicago metropolitan area. Plaintiff was forced, by orders issued by the State of Illinois on March 15, 2020 and March 20, 2020, to cease its operations because it is in proximity to places contaminated by the COVID-19 virus.

3. To protect its business from catastrophic losses of this nature, based on events wholly beyond their control, Plaintiff obtained business interruption insurance from Twin City written on standard form policies.

4. Twin City issued hundreds of identical policies to restaurants, taverns

and similar businesses.

5. In violation of its policies, Twin City has denied Plaintiff's claims arising from the government-ordered interruption of their businesses.

6. Twin City has also determined that it will not pay any similar claims under its standard form policies.

**PARTIES**

7. Plaintiff Firenze Ventures LLC is a limited liability company that operates the "Firenze - Italian Street Food" restaurant in a food court of the downtown Chicago Metra rail station, commonly known as the Ogilvie Transportation Center, and with an address of 131 N. Clinton St., Chicago, IL 60661-1506.

8. Defendant Twin City is a corporation with its principal offices at One Hartford Plaza, Hartford, CT 06155, and 501 Pennsylvania Parkway, Suite 400, Indianapolis, IN 46280-0014. It does business as part of The Hartford group of insurance companies. Its insurance products are advertised at [www.thehartford.com](http://www.thehartford.com).

9. Twin City is engaged in the business of selling insurance contracts to commercial entities such as Plaintiff in Illinois and elsewhere.

**JURISDICTION AND VENUE**

10. This Court has personal jurisdiction over Twin City pursuant to 735 ILCS 5/2-209 because Twin City:

- a. Transacts business in Illinois;
- b. Contracted to insure risks located within Illinois;
- c. Advertised for business from persons located in Illinois;

d. Made contracts substantially connected with Illinois.

11. Venue in Cook County is proper because a substantial portion of the events at issue occurred in Cook County.

**ADVERTISING BY TWIN CITY**

12. Twin City has for many years advertised and represented that it has comprehensive insurance programs for all types of restaurants, bakeries, bars, and similar establishments, stating:

a. “When It Comes to Restaurant Insurance, We’ve Got Your Back”.

(<https://www.thehartford.com/business-insurance/restaurant>)

b. “Why Is Restaurant Business Insurance So Important? [¶] Insurance

protects the restaurant business you’ve worked hard to build – and helps keep it moving forward. No matter how hard you try to make sure everything is perfect, problems happen. And we’re here when they do.

With us, you know you have an insurance company that always has your back. In fact, because we know that all business owners have unique needs, we’ve put together coverage options specifically made for restaurant owners with our food insurance and restaurant insurance. [¶]

We know you have a lot to handle on a daily basis, but with the right coverage, we’re here to help take some of the stress away, by helping protect your small business with restaurant insurance that works as hard as you do to protect against the unexpected.”

(<https://www.thehartford.com/business-insurance/restaurant>)

- c. “Although there are many options out there, not all business insurance companies provide the same coverage. At The Hartford, we know that every business is unique. That’s why we offer insurance solutions tailored to the specific risks your business may face. Whether it’s commercial property, general liability or business income insurance, we can help protect you. We’re here to help propel you, your employees and your business forward.”

(<https://www.thehartford.com/business-insurance/company>)

13. Twin City developed a reputation for providing comprehensive coverage for the restaurant industry as a result of such advertising.

14. Plaintiff was familiar with that reputation and obtained coverage from Twin City Insurance as a result.

#### TWIN CITY POLICY

15. On March 15, 2020, Plaintiff had a Spectrum businessowners’ insurance policy issued by Twin City in effect. A copy of the policy is in Exhibit A.

16. The policy included:

- a. Limited fungi, bacteria or virus coverage, under form SS 40 93, in the amount of \$50,000, and including business income and extra expense coverage for 30 days.
- b. Ordinary business income and extra expense coverage, including “civil authority” coverage for 30 days.

17. The limited fungi, bacteria or virus coverage (Form SS 40 93 07 05) provided

that covered losses included the following: “We will pay for loss or damage by ‘fungi’, wet rot, dry rot, bacteria and virus. As used in this Limited Coverage, the term loss or damage means: (1) Direct physical loss or direct physical damage to Covered Property caused by ‘fungi’, wet rot, dry rot, bacteria or virus, including the cost of removal of the ‘fungi’, wet rot, dry rot, bacteria or virus; . . . “

18. The “Civil Authority” coverage provided (Form SS 00 07 07 05, p. 11 of 25) that “(1) This insurance is extended to apply to the actual loss of Business Income you sustain when access to your ‘scheduled premises’ is specifically prohibited by order of a civil authority as the direct result of a Covered Cause of Loss to property in the immediate area of your ‘scheduled premises’. (2) The coverage for Business Income will begin 72 hours after the order of a civil authority and coverage will end at the earlier of: (a) When access is permitted to your ‘scheduled premises’; or (b) 30 consecutive days after the order of the civil authority.”

19. “Immediate” is not defined.

20. The combined effect of the limited virus coverage and “Civil Authority” coverage is that Twin City had to pay for the loss of business income and necessary extra expense caused by “order of a civil authority” issued because property other than the insured’s premises, but in its “immediate area,” is contaminated by a virus.

21. Plaintiff paid its premium for these coverages.

22. The Policy is an “all risk” policy that provides broad coverage for losses caused by any cause unless expressly excluded.

#### **FACTS RELATING TO LOSS**

23. On March 15, 2020, Illinois Governor Pritzker issued Executive Order 2020-07,

ordering the closing of all restaurants, bars, and movie theaters to the public in an effort to address the ongoing COVID-19 pandemic.

24. Executive Order 2020-07 states that “the Illinois Department of Public Health recommends Illinois residents avoid group dining in public settings, such as in bars and restaurants, which usually involves prolonged close social contact contrary to recommended practice for social distancing,” and that “frequently used surfaces in public settings, including bars and restaurants, if not cleaned and disinfected frequently and properly, also pose a risk of exposure.” (<https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-07.aspx>)

25. The COVID-19 pandemic is caused by a virus – a microscopic particle consisting of RNA and protein. The virus is carried by persons and certain animals. It enters the human respiratory system and causes cells to reproduce it, sickening and sometimes killing the affected individuals.

26. If the virus is deposited on furniture, floors, walls or other surfaces, it can persist for 2-4 weeks unless it is destroyed. A person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes. <https://www.cdc.gov/coronavirus/2019-ncov/about/transmission.html>

27. Numerous business premises in the Chicago metropolitan area were infected by the COVID-19 virus.

28. The infected premises included Metra facilities. At least four Metra employees tested positive for COVID-19 during March 2020. All Metra employees who had contact with these employees were isolated. Metra railcars, vehicles and station facilities were cleaned and disinfected. Metra drastically reduced its schedules and instituted daily disinfection of railcars.

Metra brought in extra crews to disinfect downtown stations, including the station in which Plaintiff's restaurant was located. Patrons were asked not to travel unless necessary and to purchase tickets online so as to minimize contact with Metra personnel.

(<https://metrarail.com/about-metra/newsroom/metra-conductor-tests-positive-covid-19>) Ticket offices at 11 stations were closed altogether. As a result of the responsive actions taken by Metra, ridership decreased by 97%. Metra could not shut itself down completely because it provided transportation for healthcare, emergency and essential workers; healthcare and emergency personnel were transported free of charge.

29. The continuous presence of the coronavirus on such premises rendered the premises unsafe and unfit for their intended use and therefore caused physical property damage or loss under the Twin City Policies.

30. On March 20, 2020, Governor Pritzker issued Executive Order 2020-10, closing all "non-essential" businesses in Illinois, including all restaurants and movie theaters, in direct response to the continued and increasing presence of the coronavirus on property or around Plaintiff's premises. (<https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-10.aspx>) Plaintiff's business does not qualify as essential. The March 20, 2020 order noted "the virus's propensity to physically impact surfaces and personal property" as a basis for prohibiting on-premises consumption of food.

31. As a result of the March 15, 2020 and March 20, 2020 Closure Orders, the Plaintiff has been forced to halt ordinary operations, resulting in substantial lost revenues.

32. In addition, Metra is itself a governmental authority (it is a unit of the Regional Transportation Authority) and the measures it took to limit use of its transportation system are

“Civil Authority” orders.

### **TWIN CITY’S REFUSAL TO COVER LOSS**

33. Plaintiff made a claim for its loss. By letter of June 2, 2020, Twin City denied Plaintiff’s claim, asserting that “We have no information to indicate that a civil authority issued an order as a direct result of a covered cause of loss to property in the immediate area of your scheduled premises; accordingly, this additional coverage is not available for your claimed loss of business income.” (Exhibit B)

34. Twin City also asserted that the virus “was not caused by a ‘Specified Cause of Loss’,” which includes “aircraft or vehicles.” (Exhibit B) Twin City took this position even though the virus was introduced into the United States on board one or more aircraft from China and contaminated the railway cars, personnel and other facilities of the Metra system; Plaintiff’s business was located within one of the main Metra terminals in downtown Chicago.

35. Twin City’s position is contrary to Illinois law. Illinois courts have held that the presence of a dangerous substance in a property in a form capable of harming persons in that property constitutes “physical loss or damage.” *See, e.g., Board of Educ. of Twp. High Sch. Dist. No. 211 v. International Ins. Co.*, 308 Ill.App.3d 597, 720 N.E.2d 622, 625–26 (1<sup>st</sup> Dist. 1999) (asbestos fibers); *U.S. Fidelity & Guar. Co. v. Wilkin Insulation Co.*, 144 Ill.2d 64, 578 N.E.2d 926, 931-932 (1990) (complaints alleging that building and contents were contaminated by toxic asbestos fibers found to allege potentially covered property damage). The COVID-19 virus is a dangerous substance that can cause injury or death.

36. Nothing in the Twin City policies requires a deformation or permanent change in physical appearance of property to constitute “damage to property.” Just as asbestos

fibers are remedied by a removal process, the presence of the COVID-19 virus is dealt with by removing it.

37. The express virus coverage recognizes these facts.

38. In addition, ambiguous or unclear language in a policy is construed against the insurer. Twin City used policy language referring to a virus or harmful microorganism being “caused” by “aircraft or vehicles”; either this means that the virus or microorganism was transmitted or carried by aircraft or vehicle, or it has no meaning.

39. The Twin City policies do not require that the dangerous substance be present in the Plaintiff’s property itself. As noted above, the Twin City Policy includes “Civil Authority” coverage, pursuant to which Twin City promised to pay for the loss of business income and necessary extra expense caused by action of civil authority that prohibits access to Plaintiff’s insured premises. The Civil Authority coverage is triggered when any non-excluded cause results in damage to property other than property at the Plaintiff’s premises, and is intended to cover losses resulting from governmental actions taken in response.

40. Governor Pritzker’s March 15, 2020 and March 20, 2020 Closure Orders were issued because of the widespread presence of COVID-19 throughout the Chicago metropolitan area, resulting in contamination by the virus of numerous premises. This is damage to property other than property at the Plaintiff’s premises, resulting in an order by civil authority to close Plaintiff’s premises.

41. The March 15, 2020 and March 20, 2020 orders prohibited the public from accessing Plaintiff’s restaurant, thereby causing the necessary suspension of their operations and triggering the Civil Authority coverage under the Policy.

42. In addition, Metra's actions to reduce ridership to 3% of its pre-pandemic figure after Metra personnel tested positive for the virus triggered the Civil Authority coverage under the Policy.

43. Twin City's position is contrary to its policy, defeats justifiable expectations created by the advertising of its policies, and is arbitrary and unreasonable.

44. As a result of the Closure Orders, Plaintiff and the class members have each suffered substantial Business Income losses and incurred Extra Expense.

45. Plaintiff submitted a claim to Twin City requesting coverage for its business interruption losses promised under the Policy.

46. Twin City has denied the claim. (Exhibit B)

#### **CLASS ALLEGATIONS**

47. Plaintiff brings this action on behalf of a class and subclass.

48. The class consists of all persons and entities engaged in business at Illinois addresses that, on March 15, 2020, carried business interruption coverage with Twin City containing both (a) express coverage for "virus" and (b) a "civil authority" provision.

49. The subclass includes all class members located in or within 1 mile of a Metra line or facility.

50. Excluded from the Class are any members of the judiciary assigned to preside over this matter; any officer or director of Defendant; and any immediate family member, of such officer or director.

51. There are hundreds of establishments in Illinois insured by Twin City Insurance. The class is so numerous that joinder of all members is not practicable.

52. There are questions of law and fact common to the class members, which common questions predominate over any questions relating to individual class members. The predominant common questions are:

- a. Whether Twin City's standard form insurance policies cover the shutdown of businesses pursuant to the closure orders and Metra actions;
- b. Whether Twin City wrongfully denied coverage;
- c. Whether Twin City's actions violate §155 of the Insurance Code, 215 ILCS 5/155.
- d. Whether Twin City's actions, in light of the manner in which the insurance policies were promoted, violate the Illinois Consumer Fraud Act.

53. Plaintiff will fairly and adequately represent the class members. Plaintiff has retained counsel experienced in class actions and insurance litigation. Plaintiff's claim is typical of the claims of the class members. All are based on the same factual and legal theories.

54. A class action is appropriate for the fair and efficient adjudication of this matter, in that:

- a. Individual actions are not economically feasible.
- b. Multiple actions raising the same issue are undesirable.

**COUNT I – DECLARATORY JUDGMENT AND DAMAGES FOR BREACH OF INSURANCE CONTRACTS**

55. Plaintiff incorporates paragraphs 1-54.

56. Each Policy is an insurance contract under which Twin City was paid premiums in exchange for its promise to pay losses for claims covered by the Policy, including

business losses incurred as a result of the government orders forcing them to close their businesses.

57. Plaintiff has complied with all applicable provisions of the Policy, including payment of the premiums in exchange for coverage under the Policy.

58. Twin City has arbitrarily and without justification refused to reimburse Plaintiff and class members for any losses incurred as a result of the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

59. There is a controversy between Plaintiff and the class, on the one hand, and Twin City, on the other, concerning the meaning of the Twin City policies.

60. A declaratory judgment is necessary to resolve such controversy.

61. Plaintiff and the class have suffered damage as a result of Twin City's wrongful denial of coverage.

WHEREFORE, the Court should enter judgment in favor of Plaintiff and the class and against Defendant for:

- i. Appointing Plaintiff as class representatives and the undersigned as class counsel;
- ii. A declaration that Twin City's standard form policies cover business interruption damages due to the Closure Orders;
- iii. Actual damages;
- iv. Alternatively, an order requiring Twin City to adjust all virus claims under its policies;
- v. Costs;

vi. Such other or further relief as the Court deems proper.

**COUNT II – 215 ILCS 5/155**

62. Plaintiff incorporates paragraphs 1-54.

63. Twin City immediately denied the claims of Plaintiff and class members without conducting a “reasonable investigation based on all available information” as required under Illinois law.

64. 215 ILCS 5/154.6 defines as an “improper claims practice” the following:

§ 154.6. Acts constituting improper claims practice. Any of the following acts by a company, if committed without just cause and in violation of Section 154.5, constitutes an improper claims practice: . . .

(c) Failing to adopt and implement reasonable standards for the prompt investigations and settlement of claims arising under its policies;

(d) Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear;

(h) Refusing to pay claims without conducting a reasonable investigation based on all available information;

(n) Failing in the case of the denial of a claim or the offer of a compromise settlement to promptly provide a reasonable and accurate explanation of the basis in the insurance policy or applicable law for such denial or compromise settlement . . . .

(r) Engaging in any other acts which are in substance equivalent to any of the foregoing.

65. On information and belief, Twin City directed its insurance agents to inform insureds that virus claims would not be honored, as part of a plan to discourage claim notifications.

66. Twin City’s denials were vexatious and unreasonable.

67. Twin City’s denials constitute “improper claims practices” under 215

ILCS 5/154.6.

WHEREFORE, the Court should enter judgment in favor of Plaintiff and the class members for, in addition to the amount owed under the Policies at the time of judgment:

- i. Appointing Plaintiff as class representatives and the undersigned as class counsel;
- ii. An amount equal to the greater of (1) 60% of the amount which the trier of fact finds that Plaintiff and the class members are entitled to recover under the Policies, exclusive of costs; and (2) \$60,000 per Plaintiff and class member. 215 ILCS 5/155.
- iii. Attorney's fees, litigation expenses and costs of suit;
- iv. Such other or further relief as the Court deems proper.

**COUNT III – ILLINOIS CONSUMER FRAUD ACT**

68. Plaintiff incorporates paragraphs 1-54.

69. Twin City engaged in unfair and deceptive acts and practices, in violation of 815 ILCS 505/2, by:

- a. Creating through its advertising the expectation among prospective insureds that business interruption resulting from orders of civil authorities would be covered;
- b. Selling policies purporting to fulfill that expectation;
- c. Then arbitrarily and without basis denying coverage for such claims.

70. Twin City engaged in such conduct in the course of trade and commerce in Illinois.

71. Plaintiff and the class members have suffered damage as a result of Twin City's conduct.

WHEREFORE, the Court should enter judgment in favor of Plaintiff and the class and against Defendant for:

- i. Appointing Plaintiff as class representatives and the undersigned as class counsel;
- ii. A declaration that Twin City's standard form policies cover business interruption damages due to the Closure Orders;
- iii. Actual damages;
- iv. Alternatively, an order requiring Twin City to adjust all virus claims under its policies;
- v. Punitive damages;
- vi. Attorney's fees, litigation expenses and costs;
- vii. Such other or further relief as the Court deems proper.

/s/ Daniel A. Edelman  
Daniel A. Edelman

Daniel A. Edelman  
Dulijaza (Julie) Clark  
Bryan G. Lesser  
EDELMAN, COMBS, LATTURNER & GOODWIN, LLC  
20 South Clark Street, Suite 1500  
Chicago, IL 60603-1824  
(312) 739-4200  
(312) 419-0379 (FAX)  
Email address for service: [courtecl@edcombs.com](mailto:courtecl@edcombs.com)  
Atty. No. 41106 (Cook)

Patrick Warton