

Courtroom Number: 2008
Location: District 1 Court
Cook County, IL

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

FILED
6/30/2021 3:29 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2021CH03208

Four Corners Tavern Group, Inc.

v.

Zurich American Insurance Company

13884466

2021CH03208

No.

CIVIL ACTION COVER SHEET - CASE INITIATION

A Civil Action Cover Sheet - Case Initiation shall be filed with the complaint in all civil actions. The information contained herein is for administrative purposes only and cannot be introduced into evidence. Please check the box in front of the appropriate case type which best characterizes your action. Only one (1) case type may be checked with this cover sheet.

Jury Demand Yes No

PERSONAL INJURY/WRONGFUL DEATH

CASE TYPES:

- 027 Motor Vehicle
- 040 Medical Malpractice
- 047 Asbestos
- 048 Dram Shop
- 049 Product Liability
- 051 Construction Injuries
(including Structural Work Act, Road Construction Injuries Act and negligence)
- 052 Railroad/FELA
- 053 Pediatric Lead Exposure
- 061 Other Personal Injury/Wrongful Death
- 063 Intentional Tort
- 064 Miscellaneous Statutory Action
(Please Specify Below**)
- 065 Premises Liability
- 078 Fen-phen/Redux Litigation
- 199 Silicone Implant

TAX & MISCELLANEOUS REMEDIES

CASE TYPES:

- 007 Confessions of Judgment
- 008 Replevin
- 009 Tax
- 015 Condemnation
- 017 Detinue
- 029 Unemployment Compensation
- 031 Foreign Transcript
- 036 Administrative Review Action
- 085 Petition to Register Foreign Judgment
- 099 All Other Extraordinary Remedies

By: /s/ Daniel W. Tarpey
(Attorney) (Pro Se)



(FILE STAMP)

COMMERCIAL LITIGATION

CASE TYPES:

- 002 Breach of Contract
- 070 Professional Malpractice
(other than legal or medical)
- 071 Fraud (other than legal or medical)
- 072 Consumer Fraud
- 073 Breach of Warranty
- 074 Statutory Action
(Please specify below.**)
- 075 Other Commercial Litigation
(Please specify below.**)
- 076 Retaliatory Discharge

OTHER ACTIONS

CASE TYPES:

- 062 Property Damage
- 066 Legal Malpractice
- 077 Libel/Slander
- 079 Petition for Qualified Orders
- 084 Petition to Issue Subpoena
- 100 Petition for Discovery

** Declaratory judgment for insurance coverage

Primary Email: dtarpey@tarpeywix.com

Secondary Email: _____

Tertiary Email: _____

Pro Se Only: I have read and agree to the terms of the Clerk's Office Electronic Notice Policy and choose to opt in to electronic notice form the Clerk's Office for this case at this email address: _____

FILED DATE: 6/30/2021 3:29 PM 2021CH03208

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

Four Corners Tavern Group, Inc.

Plaintiff,

v.

Zurich American Insurance Company,

Defendant.

Case No.

COMPLAINT

For its complaint against Defendant, Zurich American Insurance Company (“Zurich”), Plaintiff, Four Corners Tavern Group, Inc. (“Four Corners”), by its attorneys Tarpey Wix LLC, states the following:

INTRODUCTION

1. Four Corners is the insured on a policy issued by Zurich. Exhibit A (the “Policy”). Four Corners operates numerous bars and restaurants, the primary business of which is to serve food and drinks to patrons in person in the curated atmosphere it has created at each of its physical locations. Four Corners incurred a covered loss in connection with the government mandated shutdown of the state of Illinois and Cook County in response to the Covid-19 pandemic and timely reported the claim to Zurich. Zurich, however, has wrongfully denied coverage. Four Corners seeks a declaration of insurance coverage under the Policy and a judgment of bad faith by Zurich.

PARTIES, VENUE, AND JURISDICTION

2. Four Corners is an Illinois corporation with its principal place of business in Cook County, Illinois. The Policy at issue in this case concerns a number of bars and restaurants in Cook County operated by Four Corners.

3. Zurich is a foreign stock corporation with its principal place of business in Schaumburg, Illinois.

FACTS COMMON TO ALL COUNTS

A. The Policy Covers Loss of Business Income Due to Physical Loss.

4. The Policy provides coverage if Four Corners suffers either a “direct physical loss of” or “damage to” an insured property. It states: “We will pay for direct physical loss of or damage to ‘real property’ and ‘personal property’ at a ‘premises’ directly caused by a ‘covered cause of loss.’” PPP-0110 (08 16), p. 1.

5. The Policy provides coverage for loss of income resulting from loss of an insured property due to any “covered cause of loss.”

“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... The loss or damage must be directly caused by a ‘covered cause of loss’.” PPP-0130 (8 16), p. 1.

6. “Covered cause of loss” refers to any cause not explicitly excluded from the Policy. “Covered cause of loss’ means a fortuitous cause or event, not otherwise excluded...” PPP-0103 (08 16), p. 3 (emphasis added).

7. The Policy specifically includes coverage for loss of business income when a “civil authority” prohibits access to the premises.

“We will pay for the actual loss of ‘business income’ you sustain... resulting from the necessary ‘suspension’, or delay in the start, of you ‘operations’ if the ‘suspension’ or delay is caused by order of civil authority that prohibits access to the ‘premises’ or ‘reported unscheduled premises.’ That order must result from a civil authority’s response to direct physical loss of or damage to property located within one mile from the ‘premises’... which sustains a ‘business income’ loss. The loss or damage must be directly caused by a ‘covered cause of loss’.” PPP-0130 (8 16), p. 1.

8. The Policy defines suspension broadly. “‘Suspension’ means:
 - a. The slowdown or cessation of your business activities; or
 - b. That a part or all of the covered location is rendered untenable.” PPP-0103 (08 16), p. 18.
9. The Policy does not define “physical,” “loss,” or “damage.”

B. The COVID-19 Pandemic.

10. Research by the Centers for Disease Control and Prevention (“CDC”) indicated that the novel coronavirus that causes COVID-19 can spread by respiratory droplets when an infected person coughs, sneezes, or talks. The research indicated that a person could become infected from respiratory droplets or potentially by touching a surface or object that has the virus on it and then by touching the mouth, nose, or eyes.

11. Research led by scientists from the National Institute of Health (“NIH”) National Institute of Allergy and Infectious Diseases (“NIAID”) indicated that the virus could live on surfaces for several days and in the air for several hours. Research published in The New England Journal of Medicine (“NEJM”) also indicated the virus can survive in the air for several hours.

12. Research further indicated that COVID-19 may be spread when an infected person coughs, sneezes, or talks, particularly when in close contact with other people. According

to CDC research, it is unknown how long the air inside a room occupied by someone with confirmed COVID-19 remains potentially infectious, and facilities need to consider factors such as the size of the room and the ventilation system design (including location of supply and exhaust vents) when deciding how long to close off rooms or areas used by ill persons before beginning disinfection. Taking measures to improve ventilation in an area or room where someone was ill or suspected to be ill with COVID-19 will help shorten the time it takes respiratory droplets to be removed from the air. According to the CDC, the more an individual interacts with others, and the longer that interaction, the higher the risk of COVID-19 spread.

13. CDC guidance for restaurants and bars stated that the risk of COVID-19 spread increases in a restaurant or bar settings with on-site dining. On-site dining where seating capacity is reduced to allow tables to be spaced at least 6 feet apart poses a “high” risk of infection. On-site dining where seating capacity is no reduced and tables are not spaced at least 6 feet apart poses the “highest risk” of infection.

14. Early studies found that SARS-CoV-2 can survive on surfaces for two or three days, but as epidemiologists watched the pandemic unfold, evidence emerged about the disease spreading in crowded rooms – especially at bars, restaurants and churches – suggesting that airborne virus particles were the main cause of transmission. The State of Illinois recognized the propensity of COVID-19 to physically impact surfaces and personal property.

15. While the FDA Restaurant Guidance contemplates best practices for food preparation and take-out and delivery services, it did not provide guidance on how to prevent the spread of coronavirus when serving customers inside a dining room, bar, or theater, and in fact included recommendations like “[d]iscontinu[e] operations, such as salad bars, buffets, and beverage service stations that require customers to use common utensils or dispensers.” The

CDC has published research finding: “Adults with positive SARS-CoV-2 test results were approximately twice as likely to have reported dining at a restaurant than were those with negative SARS-CoV-2 test results.” This research also states: “Reports of exposures in restaurants have been linked to air circulation. Direction, ventilation, and intensity of airflow might affect virus transmission, even if social distancing measures and mask use are implemented according to current guidance. Masks cannot be effectively worn while eating and drinking, whereas shopping and numerous other indoor activities do not preclude mask use.”

C. Civil Authorities Cause a Loss of Business Income by Prohibiting Access to the Insured Properties.

16. Beginning in March 2020, Four Corners incurred severe losses of business income due to orders by civil authorities, both state and local, that prohibited access to properties insured under the Policy.

17. 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 pursuant to an action of civil authority.

18. Executive Order 2020-07 required that bars and restaurants in Illinois “must suspend service for and may not permit on-premises consumption,” and prohibited the public from accessing Plaintiff’s restaurants, prohibiting Plaintiff from using their properties to host customers and triggering the civil authority coverage under the Policy. Executive Order 2020-07 specifically states, “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.”

19. Executive Order 2020-07 required Four Corners to physically close and suspend normal operations at all of their locations on March 16, 2020. Executive Order 2020-07 applied to “all businesses in the State of Illinois that offer food or beverages for on-premises consumption, including restaurants, bars, grocery stores, and food halls,” and prohibited customers from entering the premises of these businesses other than for carry-out and then immediately leave upon receiving the food. As a result of the order, Four Corners’ properties covered by the Policy could not physically host customers.

20. On March 20, 2020, Governor Pritzker issued Executive Order 2020-10, closing all “non-essential” businesses in Illinois, including all restaurants and movie theaters. Four Corners’ businesses do not qualify as essential. Executive Order 2020-10 prohibited “all public and private gatherings of any number of people occurring outside a single household or living unit,” and closed to the public “all places of public amusement, whether indoors or outdoors,

21. Executive Order 2020-10 likewise was made in response to the continued and increasing presence of the coronavirus on property or around Plaintiffs’ premises, and extended the requirement that bars and restaurants in Illinois “must suspend service for and may not permit on-premises consumption” through April 7, 2020.

22. On April 1, 2020, Governor Pritzker issued Executive Order 2020-18 in response to the continued and increasing presence of the coronavirus on property or around Plaintiff’s premises and extended the requirement that bars and restaurants in Illinois “must suspend service for and may not permit on-premises consumption” through April 30, 2020.

23. On April 30, 2020, Governor Pritzker issued Executive Order 2020-32 in response to the continued and increasing presence of the coronavirus on property or around

Plaintiff's premises and extended the prohibition of on-premises consumption through May 30, 2020.

24. Like the March 15, 2020 Executive Order, the March 20, 2020, April 1, 2020, and April 30, 2020 Executive Orders prohibited the public from accessing Plaintiff's restaurants, thereby causing the necessary suspension of their operations and triggering the civil authority coverage under the Policy.

25. Under the Illinois "Restore Illinois" reopening plan, in Phases 1-3, access to bars and restaurants is limited to delivery, pickup and drive-through only. In Phase 4, bars and restaurants were permitted to open but with capacity limits. Illinois did not enter Phase 4 until June 26, 2020, and thereafter continued to limit access and restricted indoor dining to groups of 10 or less, with tables spaced 6-feet apart in seated areas and with standing areas at no more than 25% of capacity.

26. On October 22, 2020, Chicago Mayor, Lori Lightfoot, issued an ordinance banning any bars that did not also serve food from using any of their indoor space and requiring all bars, restaurants, and other nonessential businesses to close by 10:00 PM.

27. On October 29, 2020, Governor Pritzker issued Executive Order 2020-64 prohibiting all bars and restaurants in Chicago from hosting patrons in-doors. That order remains in effect as of filing this complaint.

28. Four Corners has suffered a significant loss because they could not host customers at the properties covered by the Policy.

29. These losses are covered losses under various sections of the Policy.

D. Zurich Wrongfully Denies Coverage Based on a “Microorganism Exception.”

30. Zurich wrongfully denied coverage based on the “Microorganism Exclusion” in the Policy. That section states:

“We will not pay for loss or damage consisting of, directly or indirectly caused by, contributed to, or aggravated by the presence, growth, proliferation, spread, or any activity of ‘microorganisms’, unless resulting from fire or lightning. Such loss or damage is excluded regardless of any other cause or event, including a ‘mistake’, ‘malfunction’, or weather condition, that contributes concurrently or in any sequence to the loss, even if such other cause or event would otherwise be covered.” Ex. A, PPP-0110 (0816), p. 3.

31. This exclusion is not applicable because Four Corners lost the use of its physical premises due to the Executive Orders of the Governor.

32. As a result of Governor Pritzker’s and Mayor Lightfoot’s use of civil authority, Plaintiff has been forced to suspend ordinary operations, resulting in substantial lost income. These conditions will continue into the future and will result in a loss in use of Four Corners’ properties and loss of income for an indefinite period.

COUNT I
DECLARATORY JUDGMENT

33. The prior paragraphs are incorporated as if fully restated here.

34. The Policy is an insurance contract under which Zurich was paid premiums in exchange for its promise to pay Plaintiff’s losses for claims covered by the Policy, such as business losses incurred as a result of the government orders forcing them to close their businesses.

35. The government orders prohibiting customers from entering the covered premises are losses that are qualify for coverage as both “civil authority” and “covered cause of loss.”

36. Four Corners has complied with all applicable provisions of the Policy, including payment of the premiums in exchange for coverage under the Policy.

37. Zurich has arbitrarily and without justification refused to reimburse Four Corners for losses incurred by Four Corners in connection with the covered business losses related to the interruption of their businesses.

38. An actual case or controversy exists regarding Four Corners' rights and Zurich's obligations under the Policy to reimburse Four Corners for the full amount of losses incurred by Four Corners in connection with Executive Orders and the interruption of their businesses.

39. Four Corners seeks a judgment declaring the following: (a) Four Corners' losses incurred in connection with the Executive Orders are insured losses under the Policy; (b) Zurich has waived any right it may have had to assert defenses to coverage or otherwise seek to bar or limit coverage for Four Corners' losses by issuing blanket coverage denials without conducting a claim investigation as required under Illinois law; and (c) Zurich is obligated to pay Four Corners for the full amount of the losses incurred and to be incurred in connection with the covered business losses.

WHEREFORE, Four Corners respectfully requests a judgment in its favor declaring that its losses are covered by the Policy as stated above and any additional relief the Court deems right and just.

COUNT II
BREACH OF CONTRACT

40. The prior paragraphs are incorporated as if fully restated here.

41. Each Policy is an insurance contract under which Zurich was paid premiums in exchange for its promise to pay Four Corners' losses for claims covered by the Policy, such as

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

42. Four Corners has complied with all applicable provisions of the Policy, including payment of the premiums in exchange for coverage under the Policy, and yet Zurich has abrogated its insurance coverage obligations pursuant to the Policy' clear and unambiguous terms.

43. By denying coverage for any business losses incurred by Four Corners in connection with the government orders, Zurich has breached its coverage obligations under the Policy.

44. As a result of Zurich's breaches of the Policy, Four Corners has sustained substantial damages for which Zurich is liable, in an amount to be established at trial.

WHEREFORE, Four Corners respectfully requests a judgment in its favor in an amount to be determined at trial, but not less than \$100,000, its costs of suit and reasonable attorneys' fees, and any additional relief the Court deems right and just.

COUNT III
BAD FAITH DENIAL OF INSURANCE UNDER 215 ILCS 5/155

45. The prior paragraphs are incorporated as if fully restated here.

46. Upon receipt of Four Corners' claims, Zurich immediately denied the claims without conducting any investigation, let alone a "reasonable investigation based on all available information" as required under Illinois law. See 215 ILCS 5/154.6.

47. Zurich's denials were vexatious and unreasonable.

48. Zurich's denials constitute "improper claims practices" under Illinois law—namely Zurich's (1) refusals to pay Four Corners' claims without conducting reasonable

investigations based on all available information and (2) failure to provide reasonable and accurate explanations of the bases in its denials. See 215 ILCS 5/154.6 (h), (n).

49. Therefore, pursuant to 215 ILCS 5/155, Four Corners request that, in addition to entering a judgment in favor of Four Corners and against Zurich for the amount owed under the Policy at the time of judgment, the Court enter a judgment in favor of Four Corners and against Zurich for an amount equal to the greater of 60% of the amount which the trier of fact finds that Four Corners is entitled to recover under the Policy, exclusive of costs; and other penalties and costs as provided by law. See 215 ILCS 5/155.

50. Four Corners further requests that the Court enter a judgment in favor of Four Corners and against Zurich in an amount equal to the attorneys' fees and costs incurred by Four Corners for the prosecution of this coverage action against Zurich, which amount will be proved at or after trial, pursuant to 215 ILCS 5/155.

WHEREFORE, Four Corners respectfully requests a judgment in its favor in an amount to be determined at trial, but not less than \$100,000, penalties as provided by the Illinois Insurance Code, its costs of suit and reasonable attorneys' fees, and any additional relief the Court deems right and just.

Date: June 28, 2021

Respectfully submitted,
FOUR CORNERS TAVERN
GROUP, INC.

By: /s/ Daniel W. Tarpey
One of its attorneys

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