

RETURN DATE: DECEMBER 22, 2020 : JUDICIAL DISTRICT OF
HARTFORD STAGE COMPANY, INC., : HARTFORD
PLAINTIFF : AT HARTFORD
VS. :
HARTFORD FIRE INSURANCE COMPANY, :
DEFENDANT : NOVEMBER 17, 2020

COMPLAINT

First Count (Breach of Contract: Coverage of Property Loss and Damage Claims)

1. Plaintiff Hartford Stage Company, Inc. is a corporation with its principal place of business in Hartford, Connecticut.
2. Upon information and belief, Defendant Hartford Fire Insurance Company is a Connecticut insurance company with its principal place of business in Hartford.
3. Upon information and belief, Defendant is a licensed insurance company in the State of Connecticut and regularly underwrites coverage for and insures risks in this state.
4. Venue is proper in Connecticut and specifically in Hartford County because the policy at issue was delivered to Plaintiff here, Plaintiff is headquartered here, on information and belief Defendant is headquartered here, Plaintiff suffered damages here, and the risks insured under the policy at issue are located in Hartford County.
5. Plaintiff is a theatre company in Hartford, Connecticut that produces several plays a year.
6. Beginning in March 2020, state officials in Connecticut issued a series of orders closing businesses that did not offer essential services, including Plaintiff's theatre, and directing citizens to stay at home.

7. These orders prevented Plaintiff's patrons and employees from physically occupying its premises and prevented Plaintiff from operating its business.

8. Plaintiff suffered a staggering loss of business income as a result of these orders.

9. Plaintiff is insured under a business insurance policy, issued by Defendant as a Special Multi-Flex Policy, which provides for reimbursement of lost business income in the event Plaintiff's business operations are suspended or experience a slowdown.

10. Plaintiff purchased the policy to protect it in the event of an unforeseen interruption of its business, and Plaintiff faithfully paid premiums over the years to obtain this protection.

11. The recent government-mandated shutdowns of Plaintiff's theatre are precisely the sort of unforeseen, economically calamitous events Plaintiff sought to insure itself against when it purchased insurance from Defendant. But when Plaintiff made a claim for coverage as a result of the shutdowns that physically deprived Plaintiff of its business, Defendant denied Plaintiff's claim.

12. Defendant's denial of Plaintiff's claim was arbitrary, unreasonable, contrary to the language of Plaintiff's insurance policy, contrary to the undisputed facts, and contrary to law.

13. Due to Defendant's wrongful denial of coverage, Plaintiff brings this action for a declaratory judgment establishing that it is entitled to receive the benefit of the insurance coverage it purchased, for indemnification of the business losses it has sustained, and for breach of contract.

14. In March 2020, officials in Connecticut ordered the closing of all non-essential businesses, including theatres.

15. In an Executive Order effective March 12, 2020, Connecticut Governor Lamont prohibited gatherings of 250 or more people, including plays or performances. (Connecticut Executive Order No. 7).

16. In an Executive Order effective March 16, 2020, Governor Lamont prohibited gatherings of 50 or more people, including plays or live performances. (Connecticut Executive Order No. 7D).

17. In an Executive Order effective March 23, 2020, Governor Lamont closed all non-essential businesses, including Plaintiff's theatre. (Connecticut Executive Order No. 7H).

18. Under these Executive Orders, Plaintiff's theatre attendance was first severely limited, and then it was required to close its theatre for a period of several months.

19. During the closure of its theatre, Plaintiff could not allow its patrons or employees to enter its premises, nor could it operate its business.

20. As a result of the Executive Orders, Plaintiff suffered severe interruption to its business and critical loss of income.

21. Plaintiff is insured by The Hartford Company Insurance Policy No. 02 UUN AY4548 for the period July 1, 2019 to July 1, 2020 (the "Policy," attached as Exhibit A).

22. Plaintiff obtained the Policy to ensure that it would be reimbursed for lost income in the event that its business operations were interrupted.

23. Plaintiff faithfully paid premiums to Defendant on the Policy.

24. The Policy is an "all-risk" property insurance policy, meaning that it broadly covers risk of loss of or damage to Plaintiff's property, unless a coverage exclusion applies.

25. Under the terms of the Policy, Defendant agreed to pay for "direct physical loss of or direct physical damage to . . . Covered Property caused by or resulting from a Covered Cause of Loss." (Ex. A, Property Choice Coverage Form PC 00 10 01 13, p. 1 of 6.)

26. “Covered Cause of Loss” is defined as “direct physical loss or direct physical damage that occurs during the Policy Period and in the Coverage Territory unless the loss or damage is excluded or limited in this policy.” (Ex. A, Form PC 10 10 01 13, Covered Causes of Loss and Exclusions Form, p. 1 of 9.) “Direct physical loss” and “direct physical damage” are not defined in the Policy.

27. As part of this coverage, Defendant agreed to pay Plaintiff “for the actual loss of Business Income you sustain and the actual, necessary and reasonable Extra Expense you incur due to the necessary interruption of your business operations during the Period of Restoration due to direct physical loss of or direct physical damage to property caused by or resulting from a Covered Cause of Loss” (Ex. A, Form PC 00 20 01 13, Special Business Income Coverage Form, p. 1 of 4.)

28. The policy defines “interruption” as “the slowdown or cessation of any part of your business activities. . . .” (*Id.* at p. 2 of 4).

29. “Period of Restoration” is defined, in pertinent part, as “the period of time that: (1) Begins at the time the Covered Cause of Loss occurred; and (2) Ends on the earlier of: (a) The date when the property should be repaired, rebuilt or replaced with reasonable speed and similar quality; or (b) The date when business is resumed at a new permanent location.” (*Id.*)

30. Business Income is defined as “a. Net Income (Net Profit or Net Loss before income taxes), . . . that would have been earned or incurred; and b. Continuing normal operating expenses incurred, including Payroll Expenses.” (*Id.*, p. 1 of 4.)

31. In summary, under the Policy, when a Covered Cause of Loss—such as an unanticipated crisis and governmental shutdown of Plaintiff’s business—causes “direct physical

loss of or direct physical damage to” Plaintiff’s property—such as Plaintiff’s inability to access its theatre, to allow employees and patrons on its premises, and to otherwise operate its business— Defendant is obligated to pay Plaintiff for its actual loss of Business Income incurred while its business operations are suspended or experience a slowdown.

32. The Policy also provides for recovery of Plaintiff’s lost business income when a “Covered Cause of Loss” occurs at property other than Plaintiff’s properties, causing Plaintiff to be denied access to its properties.

33. For example, the Policy contains a “Civil Authority” provision, which provides that Defendant will pay Plaintiff’s lost business income when a “civil authority” takes action that prohibits access to Plaintiff’s premises, where that action is taken as the result of a Covered Cause of Loss occurring somewhere other than Plaintiff’s premises.

34. Specifically, the Policy provides as follows:

This insurance is extended to apply to the actual loss of Business Income you sustain and the actual, necessary and reasonable Extra Expense you incur 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".

(Ex. A, Form PC 26 02 01 13, Additional Coverages Form, p. 2 of 9.)

35. The Policy further provides for lost business income coverage where ingress and/or egress to Plaintiff’s property is prohibited as the result of a Covered Cause of Loss occurring elsewhere.

36. Specifically, the Policy provides:

This insurance is extended to apply to the actual loss of Business Income you sustain when ingress or egress to your "Scheduled Premises" is specifically prohibited as the direct result of a Covered

Cause of Loss to property at premises that is contiguous to your "Scheduled Premises".

(*Id.*, p. 5 of 9.)

37. After the shutdown orders, Plaintiff made a claim under the Policy for losses suffered as a result of the Executive Orders (the "Claim").

38. On April 2, 2020, Defendant denied Plaintiff's Claim. (A copy of Defendant's April 2, 2020 denial letter is attached as Exhibit B.) In its denial letter, Defendant stated "[y]ou have not identified any physical loss to any building or personal property at a scheduled premises resulting from a Covered Cause of Loss." *See* Exhibit B, p. 2.

39. On May 21, 2020, Plaintiff responded to Defendant's denial letter and provided additional information and clarified some of the misconceptions that Defendant expressed in its denial letter. (A copy of Plaintiff's May 21, 2020 letter is attached as Exhibit C.)

40. On May 28, 2020, Defendant affirmed its denial of Plaintiff's Claim. (A copy of Defendant's May 28, 2020 letter is attached as Exhibit D.) In its May 28 letter, Defendant stated that it had "not been presented with any evidence of direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss." *See* Exhibit D, p. 1.

41. Defendant's letters in response to Plaintiff's Claim misrepresented both the terms of the Policy and the cause of Plaintiff's losses.

42. Contrary to Defendant's statements, the Policy requires "direct physical loss of," or "direct physical damage to," Plaintiff's property. "Direct physical loss of" property is a legally distinct concept from "direct physical loss" to property, as Defendant is undoubtedly aware.

43. Plaintiff's lost business income was not the result of COVID-19 causing property damage on Plaintiff's premises. Plaintiff suffered business losses as a result of the Executive

Orders, which physically prevented Plaintiff's employees and patrons from occupying Plaintiff's theatre and prevented Plaintiff from operating its business.

44. Under the terms of the Policy, Plaintiff has suffered "direct physical loss of or direct physical damage to" its property as a result of the Executive Orders.

45. The Policy does not define "damage" or "loss;" therefore, under well-recognized, undisputed rules of construction, those terms are to be given their generally understood meaning, and any ambiguity should be construed in favor of coverage for Plaintiff and against Defendant, who selected the language for inclusion in its adhesion contracts.

46. "Loss" and "damage" are two distinct concepts; indeed, if the terms were synonymous, there would be no need to include both in the Policy language, separated by the disjunctive "or."

47. Common dictionary definitions of "loss" include "deprivation" and "the harm or privation resulting from loss or separation."¹

48. Common dictionary definitions of "damage" include the "harm caused to something in such a way as to impair its value, usefulness or normal function."²

49. The events described herein have unquestionably deprived Plaintiff access to, and have separated Plaintiff from, its theatre. Accordingly, Plaintiff has suffered "loss of" its premises.

50. Additionally, these events have impaired the value of the premises and have prevented them from serving their normal function. Therefore, under commonly accepted English usage, Plaintiff has also suffered "damage to" its premises.

¹ See <https://www.merriam-webster.com/dictionary/loss>.

² See <https://www.lexico.com/en/definition/damage>.

51. Plaintiff's damages are "direct" in that they were directly caused by the Executive Orders, and they are "physical" in that Plaintiff has been deprived of the ability to have patrons and employees physically present on its property without interruption due to the governmental shutdowns.³

52. Put simply, the Executive Orders caused Plaintiff to suffer both (a) direct physical loss of, and, (b) direct physical damage to, its properties because the Executive Orders deprived Plaintiff of access to its properties, prevented patrons from physically occupying Plaintiff's theatre, and prohibited Plaintiff from operating its business, thereby impairing, and in fact nearly eliminating entirely, the normal function and value of Plaintiff's business property.

53. Because Plaintiff suffered both direct physical loss of and direct physical damage to its properties, it has experienced a "Covered Cause of Loss," and Plaintiff is entitled to reimbursement under the Policy.

54. For these same reasons, Defendant is obligated to provide coverage under the "Civil Authority" and "Ingress/Egress" provisions in the Policy.

55. As set forth above, the Executive Orders are a Covered Cause of Loss. Moreover, there are numerous establishments within the "immediate area" of Plaintiff's premises that have also suffered direct physical loss of and direct physical damage to their premises caused by this Covered Cause of Loss. Accordingly, the Executive Orders that have prohibited access to Plaintiff's premises trigger the "Civil Authority" provision of the Policy.

³ See <https://www.lexico.com/en/definition/direct> (defining "direct" as "[w]ithout intervening factors or intermediaries"); see also <https://www.lexico.com/en/definition/physical> (defining "physical" as "[r]elating to things perceived through the senses as opposed to the mind; tangible or concrete.").

56. Further, coverage is similarly provided under the “Ingress/Egress” provision of the Policy, as the Executive Orders requiring the shutdown of businesses located “contiguous” to Plaintiff’s premises prevented physical ingress or egress to Plaintiff’s theatre.

57. Although Plaintiff informed Defendant that it was not aware of the presence of virus on its premises, Defendant nevertheless asserted that Plaintiff is not entitled to coverage under the Policy because of the virus exclusion. (Ex. B, p. 3-5 and Ex. D, p. 2).

58. The virus exclusion states that “[w]e will not pay for loss or damage caused directly or indirectly by” the “[p]resence, growth, proliferation, spread or any activity of ‘fungus,’ wet rot, dry rot, bacteria or virus.” (Ex. A, Form PC 10 10 01 13, p. 2 of 9).

59. In its denial, Defendant also argued that Plaintiff is not entitled to coverage based on the “Pollutants and Contaminants” exclusion. (Ex. B, p. 3-4).

60. That exclusion states Defendant will not pay for loss or damage related to the “[d]ischarge, dispersal, seepage, migration, release or escape of ‘Pollutants and Contaminants.’” (Ex. A, Form PC 10 10 01 13, p. 4 of 9).

61. As explained above, Plaintiff’s damages are the result of the Executive Orders and not the COVID-19 virus itself, so neither of these exclusions preclude coverage.

62. As a result, Plaintiff’s losses fall outside the ambit of the virus and contamination exclusions, because they were not caused by contamination by COVID-19. To the contrary, Plaintiff’s loss of business income was caused by, and the direct result of, the Executive Orders of civil authorities closing Plaintiff’s theatre and directing employees and patrons to stay at home.

63. In its denial, Defendant also claimed coverage is excluded based on the “Delay, Loss of Use or Loss of Market” provision, which states: “We will not pay for loss or damage caused by, resulting from, or arising out of delay, loss of use, or loss of market.” (*Id.*, p. 5 of 9.)

64. Defendant’s interpretation of this exclusion contradicts the very terms of the property coverage, including coverage for Civil Authority and Ingress/Egress. Any time an insured loses access to its property it is unable to use it. Here, Plaintiff’s losses are due to the Executive Orders, which required everyone in Connecticut to stay home except for essential services and closed Plaintiff’s theatre. The resulting loss of use of Plaintiff’s properties cannot be excluded or the entire property portion of the Policy, for which Defendant has been collecting premiums, is superfluous.

65. It is Defendant’s burden to prove that Plaintiff’s Claim is precluded by any exclusions, and that burden cannot be met here.

66. The Policy is an insurance contract under which Plaintiff paid premiums in exchange for Defendant’s promise to pay Plaintiff’s claims for losses covered by the Policy, such as business income losses incurred as a result of government orders impairing Plaintiff’s business operations.

67. The Policy requires Defendant to pay Plaintiff “for the actual loss of Business Income [Plaintiff] sustain[ed] and the actual, necessary and reasonable Extra Expense” while Plaintiff’s business was impaired due to the Executive Orders. (Ex. A, 00 20 01 13, p. 1).

68. Plaintiff has complied with all applicable provisions of the Policy, including payment of premiums in exchange for coverage under the Policy, and yet Defendant has failed to fulfill its insurance coverage obligations under the terms of the Policy.

69. By indicating that it would not provide coverage for any loss of or damage to Plaintiff's property that occurred as a result of the Executive Orders, Defendant has breached its coverage obligations under the Policy.

Second Count (Breach of Contract: Coverage of Civil Authority Claims)

70. Plaintiff repeats and realleges the allegations of paragraphs 1 through 69 as if fully set forth herein.

71. The Policy is an insurance contract under which Plaintiff paid premiums in exchange for Defendant's promise to pay Plaintiff's claims for losses covered by the Policy, such as business income incurred as a result of government orders impairing Plaintiff's business operations.

72. The Policy requires Defendant to pay the "actual loss of Business Income" incurred when access to Plaintiff's "Scheduled Premises" is specifically prohibited by order of a civil authority."

73. The Executive Orders constitute actions of civil authorities prohibiting access to Plaintiff's property, and Plaintiff's Claim otherwise meets the requirements for coverage under the Civil Authority provision of the Policy.

74. Plaintiff has complied with all applicable provisions of the Policy, including payment of premiums in exchange for coverage under the Policy, and yet Defendant has failed to fulfill its insurance coverage obligations under the terms of the Policy.

75. By indicating that it would not provide coverage for any losses or damage incurred by Plaintiff in connection with the Executive Orders, Defendant has breached its coverage obligations under the Policy.

Third Count (Breach of Contract: Coverage of Ingress/Egress Claims)

76. Plaintiff repeats and realleges the allegations of paragraphs 1 through 75 as if fully set forth herein.

77. The Policy is an insurance contract under which Plaintiff paid premiums in exchange for Defendant's promise to pay Plaintiff's claims for losses covered by the Policy, such as business income losses incurred as a result of government orders impairing Plaintiff's business operations.

78. The Policy requires Defendant to provide "actual loss of Business Income" sustained when ingress or egress to your "Scheduled Premises" is specifically prohibited as a direct result of a Covered Cause of Loss occurring at property other than Plaintiff's property that is located within the vicinity of Plaintiff's properties.

79. The Executive Orders prevented ingress and egress to Plaintiff's theatre and Plaintiff's Claim otherwise meets the requirements for coverage under the Ingress/Egress provision of the Policy.

80. Plaintiff has complied with all applicable provisions of the Policy, including payment of premiums in exchange for coverage under the Policy, and yet Defendant has failed to fulfill its insurance coverage obligations under the terms of the Policy.

81. By indicating that it would not provide coverage for any losses or damage incurred by Plaintiff in connection with the Executive Orders, Defendant has breached its coverage obligations under the Policy.

Fourth Count (Declaratory Judgment: The Policy has been triggered by direct physical loss of and/or damage to Plaintiff's property and the Policy's exclusions do not apply).

82. Plaintiff repeats and realleges the allegations of paragraphs 1 through 81 as if fully set forth herein.

83. The Policy requires Defendant to provide coverage to Plaintiff, as part of which Defendant is obligated to pay Plaintiff the loss of business income suffered while its business was impaired as the result of the Executive Orders.

84. Plaintiff has made a Claim for coverage for its lost business income under the terms of the Policy.

85. Defendant has asserted that Plaintiff is not entitled to its lost business income because Plaintiff did not suffer direct physical loss of or damage to its property.

86. Plaintiff suffered both direct physical loss of its properties, and direct physical damage to its properties, as it was deprived of access to, and the full value of, its properties.

87. Defendant has also asserted that Plaintiff's Claim for coverage under the Policy is precluded by exclusions in the Policy.

88. The virus and contamination exclusions are not applicable to Plaintiff's Claim because Plaintiff's business losses were not caused by, and did not result from, contamination by the SARS-CoV-2 virus.

89. The "loss of use" exclusion is not applicable because it contradicts the very nature of Business Income coverage.

90. As set forth above, true controversy exists between the parties concerning the parties' rights and obligations under the Policy.

91. Pursuant to Connecticut Practice Book § 10-29, exhibits to this Complaint are not attached in full, but shall be filed with the court and served upon each party to this action forthwith upon receipt of notice of appearance of such party with proof of service upon the same.

Wherefore, Plaintiff claims:

As to the First Count

1. Damages in the amount of Plaintiff's lost business income under the Policy.
2. Prejudgment interest.
3. Costs.
4. Such other and further relief as equity demands.

As to the Second Count

1. Damages in the amount of Plaintiff's lost business income under the Policy.
2. Prejudgment interest.
3. Costs.
4. Such other and further relief as equity demands.

As to the Third Count

1. Damages in the amount of Plaintiff's lost business income under the Policy.
2. Prejudgment interest.
3. Costs.
4. Such other and further relief as equity demands.

As to the Fourth Count


1. A declaratory ruling that the Business Interruption, Civil Authority, and Ingress/Egress provisions of the Policy have been triggered by direct physical loss of and direct physical damage to Plaintiff's property and the property of others, and that the exclusions cited by Defendant do not bar coverage of Plaintiff's claim.

2. Such other and further relief as equity demands.

JURY DEMAND


Plaintiff demands a trial by jury of all claims in this Complaint so triable.

**PLAINTIFF, HARTFORD STAGE COMPANY,
INC.**

By: _____ 305289 
Edward C. Taiman, Jr.
Sabia, Taiman LLC
450 Church Street
Hartford, CT 06103
860-541-2077
860-713-8944 (fax)
etaiman@sabialaw.com
Juris 412905

By /s/ Daniel I. Schlessinger
Daniel I. Schlessinger (3122102)
To be admitted pro hac vice
JASZCZUK P.C.
30 South Wacker Drive, Suite 2200
Chicago, Illinois 60606
Tel: (312) 442-0509
dschlessinger@jaszczuk.com
tmiller@jaszczuk.com

I hereby certify that I have personal knowledge of the financial responsibility of the Plaintiff and deem it sufficient.

_____ 305289 
Edward C. Taiman, Jr.

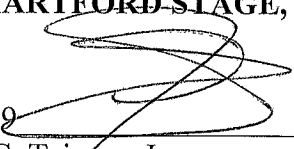
RETURN DATE: DECEMBER 22, 2020 : JUDICIAL DISTRICT OF
HARTFORD STAGE COMPANY, INC., : HARTFORD
PLAINTIFF :
VS. : AT HARTFORD
HARTFORD FIRE INSURANCE COMPANY, :
DEFENDANT : NOVEMBER 17, 2020

STATEMENT OF AMOUNT IN DEMAND

The amount in demand is in excess of \$15,000.00, exclusive of interest and costs.

PLAINTIFF, HARTFORD STAGE, INC.

By 305289


Edward C. Taiman, Jr.
Sabia Taiman, LLC
450 Church Street
Hartford, CT 06103-2205
Tel. 860-541-2077
Fax. 860-713-8944
Juris No. 412905