

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 4:20-cv-10056

ISLAND HOTEL PROPERTIES, INC.,

Plaintiff,

v.

FIREMAN'S FUND INSURANCE
COMPANY,

Defendant.

COMPLAINT

COMES NOW, Plaintiff, ISLAND HOTEL PROPERTIES, INC. (hereinafter "Plaintiff"), by and through the undersigned attorneys, brings this action against the Defendant, FIREMAN'S FUND INSURANCE COMPANY (hereinafter "Defendant"), and alleges the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1332 & 1391. The parties have complete diversity of citizenship, the amount in controversy is more than \$75,000.00, exclusive of costs, interest, and attorney's fees, and the events giving rise to this cause of action occurred in this District.

PARTIES

2. At all material times relevant to this Complaint, Plaintiff has been and is the owner of six properties in the States of Florida and Colorado including two boutique hotels, three single family rental units, and a business office, with a principle place of business located at 2116 Seidenberg Avenue, Key West, FL 33040 (hereinafter the "Subject Property"), and is otherwise *sui juris*.

3. Defendant has been and is now a Foreign Corporation incorporated in the State of California, is authorized to insure all properties located in the State of Florida, and is otherwise *sui juris*.

THE INSURANCE POLICY

4. In consideration for the premiums paid to it, Defendant issued Plaintiff a valid, binding, and enforceable policy of insurance bearing Policy Number USC009345190 (hereinafter the "Subject Policy"). A true and correct copy of the Subject Policy is attached hereto and incorporated herein as **Exhibit "A."**

5. The Subject Policy is an "all risk" policy that covers all direct physical losses to the Subject Property that are not otherwise expressly excluded.

6. The Subject Policy was and is effective between the dates of October 22, 2019, and October 22, 2020.

THE CORONA VIRUS PANDEMIC

7. "Coronaviruses are a family of viruses that can cause illnesses such as the common cold, severe acute respiratory syndrome (SARS) and Middle East respiratory syndrome (MERS). In 2019, a new coronavirus was identified as the cause of a disease outbreak that originated in China" designated as SARS-CoV-2 also known as the 2019 Novel Corona Virus or COVID-19 (hereinafter "COVID-19").¹

8. On March 9, 2020, Florida Governor Ron DeSantis, on the recommendations of the Centers for Disease Control and Prevention ("CDC"), the State Surgeon General, and the State

¹ Mayo Clinic, Coronavirus Disease 2019 (COVID-19), <https://www.mayoclinic.org/diseases-conditions/coronavirus/symptoms-causes/syc-20479963>.

Health Officer, declared that a State of Emergency exists in Florida as a result of the COVID-19 outbreak.²

9. On March 11, 2020, the World Health Organization announced that, due to “the alarming levels of spread and severity,” the COVID-19 outbreak rose to the level of a pandemic.³

10. On March 13, 2020, President Donald J. Trump declared that the “COVID-19 outbreak constitutes a national emergency” and applied same retroactively to March 1, 2020.⁴

11. On March 15, 2020, Monroe County issued a Declaration of Local State of Emergency due to the presence of COVID-19 posing risk to “the public health, safety, and welfare of county residents and visitors.”⁵

12. On March 20, 2020, Monroe County issued Emergency Directive 20-02 closing the Florida Keys to all tourists and leisure visitors and directing, in pertinent part, all hotels to cease renting to everyone except for military personal, first responders, health care workers, and construction workers.⁶

² Office of the Governor of Florida, Executive Order Number 20-52 (March 9, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/eo_20-52.pdf.

³ World Health Organization, WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19 (March 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

⁴ President Donald J. Trump, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (March 13, 2020) <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

⁵ Heather Carruthers, Monroe County Mayor, Declaration of Local State of Emergency (March 15, 2020), <https://www.monroecounty-fl.gov/documentcenter/view/23051/monroe-county-declaration-of-state-of-local-emergency-15-march-2020-covid19>.

⁶ Shanon Weiber, Emergency Management Director, Emergency Directive 20-02 (March 20, 2020), <http://www.monroecountyem.com/DocumentCenter/View/23070/Emergency-Directive-20-02>

13. On May 16, 2020, as part of Governor DeSantis's plan for recovery, Monroe County issued Emergency Directive 02-08 (second amendment) which, in pertinent part, mandated that all business implement sanitization procedures of their properties.⁷

THE CLAIM

14. On or about March 20, 2020, the COVID-19 pandemic caused direct physical loss and resultant/ensuing damages to the Subject Property (hereinafter the "Loss").

15. Additionally, as a result of the Loss, Plaintiff sustained a loss of business income.

16. To compound issues, the closure of all hotels as mandated in Monroe County Emergency Directive 20-02 caused additional lost business income.

17. Direct, resultant, and/or ensuing damages and/or loss of business income caused by the COVID-19 pandemic and Emergency Directive 20-02 are covered under the Subject Policy.

18. Direct, resultant, and/or ensuing damages and/or loss of business income caused by the COVID-19 pandemic and Emergency Directive 20-02 are not excluded from the Subject Policy.

19. Plaintiff timely notified Defendant of the Loss.

20. Defendant responded to the Loss by opening claim number SF-USCC03318220 (hereinafter the "Claim").

21. Through its adjustment of the Claim, Defendant has been afforded the opportunity to fully inspect the Loss, investigate the cause of the Loss, and quantify the amount of the Loss.

22. Ultimately, Defendant denied coverage for the Claim without inspection. A copy of the denial correspondence is attached hereto as **Exhibit "B."**

⁷ Robert Shillinger, Monroe County Attorney, Emergency Directive 20-08 (second amendment) (May 16, 2020), <https://www.monroecounty-fl.gov/DocumentCenter/View/23282/ED-02-08-second-amendment>

23. Plaintiff has complied with all prerequisites, whether denominated conditions precedent, duties after loss, or otherwise, to receive benefits or proceeds under the Subject Policy, or maintain the instant suit for the breach or declaration of the Subject Policy; alternatively, Defendant has waived or never had standing to assert any prerequisites, whether denominated as conditions precedent, duties after loss, or otherwise.

COUNT I – DECLARATORY RELIEF

24. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 23 as if fully set forth herein and further state:

25. This is an action for declaratory judgment pursuant to 28 U.S.C. §§ 2201 & 2202, and Rule 57, Federal Rules of Civil Procedure.

26. The definitions contained within the Subject Policy defines “communicable disease” as follows:

10. Communicable disease means any disease, bacteria, or virus that may be transmitted directly or indirectly from human or animal to a human.

See Exhibit “A,” Form 250000 1-13, page 52 of 63.

27. The Extensions of Coverage Applicable to Property, Business Income, and Extra Expense Coverages provides coverage for damage caused by such “communicable diseases.”

28. Upon information and belief, a portion of the premiums paid by the Plaintiff to the Defendant for the Subject Policy account for coverage of damages caused by “communicable disease.”

29. Regardless of the coverages for “communicable disease” damage afforded by the policy, the Claim was denied.

30. As such, Plaintiff is in doubt as to its rights under the Subject Policy and whether the policy provides coverage for damages and/or a loss of business income caused by viruses such as COVID-19.

31. Defendant's actions and positions taken demonstrate an actual, present practical need for declaration from this Honorable Court.

32. This Honorable Court is permitted to determine the existence or non-existence of any right, duty, power, or privilege, or of any fact upon which the legal relationship between the parties depends.

33. The Plaintiff is entitled to have this Honorable Court remove all doubts raised by Defendant concerning the application of the facts of the Claim to the Subject Policy.

34. The declaration sought with regard to the instant controversy is of a justiciable nature, does not amount to an advisory decree, and will assist in the resolution of the controversy between the parties.

35. As a result of this dispute, it has become necessary that Plaintiff retain the services of the undersigned attorneys. Plaintiff is obligated to pay a reasonable fee for the undersigned attorneys' services in bringing this action, plus costs. Plaintiff is entitled to reimbursement of these fees and costs by the Defendant subject to Section 627.428, Florida Statutes.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court:

- A. Take jurisdiction of the subject matter and parties thereto;
- B. Determine applicable laws that apply to the Subject Policy;
- C. Declare that the provisions of the Subject Policy, including any ambiguities, be construed strictly and most strongly against the insurer, and liberally in favor of the insured, so as to affect the dominant purpose of coverage and/or indemnification;
- D. Declare that the Subject Policy does not blanketly exclude coverage for loss caused by viruses;

- E. Declare that the Plaintiff is entitled to a claim for attorneys' fees and costs against Defendant, and to determine the amount of such fees and costs to be paid to the Plaintiff inclusive of a contingency fee multiplier; and
- F. Determine and declare any other material matters pertaining to the respective rights and responsibilities under the Policy, as needed to do complete justice in this case.

COUNT II - BREACH OF CONTRACT

36. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 23 as if fully set forth herein and further state:

37. Defendant has failed and/or refused to honor the contractual coverage in the Subject Policy by failing and/or refusing to compensate Plaintiff and/or pay benefits owed under the Subject Policy for the Claim based on the Loss.

38. Plaintiff has suffered damages including, but not limited to, insurance benefits under the Subject Policy and damages from Defendant's breach of the Subject Policy.

39. Defendant's denial of the Claim refusal to pay any amounts due and owing under the Subject Policy is a breach of the insurance contract.

40. As a result of this dispute, it has become necessary that Plaintiff retain the services of the undersigned attorneys. Plaintiff is obligated to pay a reasonable fee for the undersigned attorneys' services in bringing this action plus costs. Plaintiff is entitled to reimbursement of these fees and costs by the Defendant subject to Section 627.428, Florida Statutes.

41. Should Plaintiff prevail in this action, Plaintiff shall be entitled to interest as prescribed by the governing laws.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court award:

- A. General compensatory damages;
- B. Consequential damages;
- C. Interest;

- D. Attorneys' fees associated with the instant litigation, including a contingency fee multiplier;
- E. Costs incurred as a result of the instant litigation; and
- F. Any such other and further relief as this Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff, ISLAND HOTEL PROPERTIES, INC., demands a trial by jury on all issues so triable.

Respectfully submitted this day, May 25, 2020.

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