

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
DIVISION _____
CIVIL ACTION NO. 20-CI-_____

FILED ELECTRONICALLY

J&H LANMARK, INC.

PLAINTIFF

VS.

COMPLAINT

TWIN CITY FIRE INSURANCE COMPANY

SERVE: **Via Certified Mail**
Registered Agent
CT Corporation System
302 West Main Street, Suite 512
Frankfort, Kentucky, 40601

DEFENDANT

AND

HON. ANDY BESHEAR, GOVERNOR
OF THE COMMONWEALTH OF KENTUCKY

SERVE: **Via Certified Mail**
Restricted Delivery
700 Capital Avenue, Suite 100
Frankfort, KY 40601

DEFENDANT

AND

HON. MICHAEL G. ADAMS, SECRETARY OF STATE
OF THE COMMONWEALTH OF KENTUCKY

SERVE: **Via Certified Mail**
Restricted Delivery
700 Capital Avenue, Suite 152
Frankfort, KY 40601

DEFENDANT

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Comes the Plaintiff, J&H Lanmark, Inc., by counsel, and, for its Complaint against the above-named Defendants, states as follows:

PARTIES, JURISDICTION AND VENUE

1. The Plaintiff, J&H Lanmark, Inc., is and was at all times relevant hereto a Kentucky corporation with its principal place of business at 189 Moore Drive, Lexington, Fayette County, Kentucky.

2. The Defendant, Twin City Fire Insurance Company, is an insurance company authorized to conduct the business of insurance in the Commonwealth of Kentucky. Twin City is domiciled in the state of Indiana with its service of process agent on file with the Kentucky Department of Insurance as CT Corporation System located at 302 West Main Street, Suite 512, Frankfort, Kentucky, 40601.

3. The Defendants, Hon. Andy Beshear, Governor of the Commonwealth of Kentucky, and Hon. Michael G. Adams, Secretary of State of the Commonwealth of Kentucky are named in their official capacities only as signatories on Executive Order 2020-246 issued on March 22, 2020. Service may be made on Hon. Andy Beshear, Governor of the Commonwealth of Kentucky at 700 Capital Avenue, Suite 100, Frankfort, KY 40601, and Hon. Michael G. Adams, the Secretary of State of the Commonwealth of Kentucky, at 700 Capital Avenue, Suite 152, Frankfort, KY 40601.

4. Venue is proper in this Court because the acts and omissions giving rise to Plaintiff's cause of action occurred in Fayette County, Kentucky.

5. This Court may lawfully exercise jurisdiction over the Defendants.

6. The amount in controversy exceeds the minimum jurisdictional limits of this Court.

FACTS

7. Plaintiff, J&H Lanmark, Inc., is a locally owned retail business specializing in outdoor sportswear and equipment since 1972.

8. On or about June 1, 2019, Plaintiff entered into a contract of insurance with Twin City Fire Insurance Company, Policy No. 41 SBA AA9595, a "Spectrum Policy." In exchange, Plaintiff paid insurance premiums to Twin City for the promise of indemnification for losses suffered by Plaintiff including, but not limited to, business income.

9. The policy issued by Twin City Fire Insurance Company to the Plaintiff was and remains in full force and effect, providing property, business personal property, business income and extra expense, and additional coverages for the period June 1, 2019, to the present, with Plaintiff continuing to pay premiums for the same.

10. The "Spectrum Policy" issued by Twin City Fire Insurance Company to the Plaintiff is an all-risk policy, insofar as it provides that covered causes of loss under the policy mean direct physical loss or direct physical damage, unless the loss is specifically excluded or limited in the policy.

11. Plaintiff also purchased an additional Endorsement to its policy providing "Limited Fungi, Bacteria, or Virus Coverage."

12. On March 22, 2020, Hon. Andy Beshear as Governor of the Commonwealth of Kentucky and Hon. Michael G. Adams as the Secretary of the Commonwealth of Kentucky signed Executive Order 2020-246 which ordered all in-person retail businesses which were not life-sustaining to close effective March 23, 2020, at 8 p.m.

13. In support for the Executive Order, Hon. Andy Beshear and Hon. Michael G. Adams cited concerns regarding locations where people congregate unnecessarily and/or fail to follow social distancing practices, contributing to the spread of COVID 19, a respiratory disease, and overwhelming the healthcare resources of the Commonwealth of Kentucky.

14. Plaintiff's business was not considered a "life sustaining business" under the Executive Order and therefore was closed for business beginning on March 23, 2020, at 8 p.m.

15. Plaintiff made a claim to Twin City for loss of business income due to the closure of its business on March 23, 2020.

16. Twin City denied Plaintiff's claim on March 30, 2020, and again on April 20, 2020.

COUNT I
DECLARATORY JUDGMENT UNDER KRS § 418.040
(All Defendants)

17. Plaintiff repeats, re-alleges, and reasserts each and every allegation contained within the preceding paragraphs as though set forth fully herein.

18. KRS § 418.040 provides that this Court may enter declaratory judgment declaring the rights of the parties herein.

19. Defendant Twin City's all risk policy provides coverage for RISKS OF DIRECT PHYSICAL LOSS unless the loss is excluded or limited.

20. The Executive Order of Hon. Andy Beshear as Governor of the Commonwealth of Kentucky and Hon. Michael G. Adams as the Secretary of State of the

Commonwealth of Kentucky and the reasoning expressed therein led to direct physical loss to Plaintiff.

21. The Executive Order of Hon. Andy Beshear as Governor of the Commonwealth of Kentucky and Hon. Michael G. Adams as the Secretary of State of the Commonwealth of Kentucky and the reasoning expressed therein includes a “specified cause of loss” under the terms of the Plaintiff’s Twin City Policy.

22. As Plaintiff sustained a direct physical loss, insurance coverage should be afforded to Plaintiff under the “Special Coverage Policy Form” and/or the “Limited Fungi, Bacteria, or Virus Coverage” Endorsement contained within its “Spectrum Policy.”

23. Twin City denied insurance coverage to Plaintiff for which it paid Premiums based on there being no “property damage” at the Plaintiff’s property.

24. Multiple jurisdictions with similar insurance policy construct laws as the Commonwealth, construing policies similar to the Twin City policy issued to the Plaintiff, have held that Risk of Direct Physical Loss does not require physical damage to the insured’s property.

25. Plaintiff seeks Declaratory Judgment pursuant to KRS 418.040 that the Executive Order of Hon. Andy Beshear as Governor of the Commonwealth of Kentucky and Hon. Michael G. Adams as the Secretary of State of the Commonwealth of Kentucky and the reasoning expressed therein caused and/or contributed to direct physical loss as defined within the Twin City Spectrum Policy Special Property Coverage Form, a “specified cause of loss” under the terms of the Twin City Policy Spectrum Policy, and/or the “Limited Fungi, Bacteria, or Virus Coverage” Endorsement contained within its “Spectrum Policy” issued to Plaintiff.

26. Plaintiff additionally seeks Declaratory Judgment pursuant to KRS 418.040 to affirm that coverage is owed to Plaintiff under the Twin City Spectrum Policy Special Property Coverage Form and/or the “Limited Fungi, Bacteria, or Virus Coverage” Endorsement contained within its “Spectrum Policy”.

**COUNT II
BREACH OF CONTRACT
(Twin City Fire Insurance Company)**

27. Plaintiff repeats, re-alleges, and reasserts each and every allegation contained within the preceding paragraphs as though set forth fully herein.

28. Defendant Twin City is contractually obligated to indemnify Plaintiff for damages sustained as a result of “direct physical loss.”

29. Defendant Twin City has breached its contract by refusing to indemnify Plaintiff for damage covered under its “Spectrum Policy.”

30. As a result of Defendant Twin City’s breach of contract, Plaintiff has been caused to incur actual and consequential damages foreseeable to Defendant Twin City including, but not limited to, continued loss of income, attorneys’ fees, and other damages.

**COUNT III
CAUSATION AND DAMAGES**

31. Plaintiff repeats, re-alleges and reasserts each and every allegation contained within the preceding paragraphs as though set forth fully herein.

32. As a direct and proximate result of the conduct of the Defendants, Plaintiff has been caused to suffer and will suffer in the future the following damages:

- a. Actual, consequential, incidental, and foreseeable damages;
- b. Attorneys’ fees, costs, pre- and post-judgment interest, and expenses.

WHEREFORE, Plaintiff, J&H Lan-Mark, Inc., prays the Court as follows:

1. For entry of a Declaration that the Executive Order of Hon. Andy Beshear as Governor of the Commonwealth of Kentucky and Hon. Michael G. Adams as the Secretary of State of the Commonwealth of Kentucky and the reasoning expressed therein caused and/or contributed to direct physical loss as defined within the Twin City Spectrum Policy Special Property Coverage Form and/or the “Limited Fungi, Bacteria, or Virus Coverage” Endorsement contained within its “Spectrum Policy” issued to Plaintiff.
2. For entry of a Declaration that coverage is owed to Plaintiff under the Twin City Spectrum Policy Special Property Coverage Form and/or the “Limited Fungi, Bacteria, or Virus Coverage” Endorsement contained within its “Spectrum Policy”.
3. For entry of a Declaration of Plaintiff’s rights and Twin City’s obligations under the Policy pursuant to KRS § 418.040.
4. For a trial cause by a jury;
5. That Plaintiff be awarded all of its damages enumerated above, including actual, consequential, incidental and foreseeable damages, its attorneys’ fees, costs, expenses herein expended, pre-judgment and post-judgment interest, and any and all equitable relief that may be appropriate; and
6. Any other relief, equitable or otherwise, to which the Court may deem it entitled.

Respectfully submitted,

GOLDEN LAW OFFICE, PLLC

/s/ Kellie M. Collins

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Presiding Judge: HON. THOMAS L. TRAVIS (622370)

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