

12-Person Jury

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Hearing Date: 10/15/2020 9:30 AM - 9:30 AM
Courtroom Number: 2402
Location: District 1 Court
Cook County, IL

FILED
6/17/2020 7:32 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL

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

FILED DATE: 6/17/2020 7:32 AM 2020CH04589

JAEWOOK LEE, D/B/A EVANSTON GRILL,)
Individually and on behalf of the classes)
described below,)
)
Plaintiff,)
)
vs.)
)
STATE FARM FIRE AND CASUALTY)
COMPANY)
)
Defendant.)

9502487

Case No. 2020 CH^{2020CH04589}

PLAINTIFF DEMANDS

TRIAL BY JURY

CLASS ACTION COMPLAINT

Plaintiff, JAEWOOK LEE, D/B/A EVANSTON GRILL (“Evanston Grill”) on behalf of class members described below, by and through its undersigned attorneys, and for its Complaint against Defendant, STATE FARM FIRE AND CASUALTY COMPANY (“State Farm”), states as follows:

I. INTRODUCTION

1. Plaintiff is a small business insured by State Farm. Just like thousands of other small businesses insured by State Farm in Illinois, Plaintiff was obligated by government orders to shut down or drastically limit its operations.

2. Plaintiff and many others purchased insurance to cover just this sort of risk. Unfortunately, State Farm has applied tortured logic to reason that it does not have to pay for these losses that it previously promised to insure.

3. With this Complaint, Plaintiff, on behalf of a class of similarly situated insureds, seeks a declaration that its losses are in fact covered, similar losses likely to be incurred in the future will be covered, and for payment of those losses and penalties pursuant to Illinois law for this bad faith denial of the claims.

II. PARTIES

4. Plaintiff, Evanston Grill, is a restaurant in Evanston, Illinois. It is unincorporated and owned and operated by Cook County citizens, domiciled in Cook County, Hyun Lee and his father Jaewook Lee.

5. State Farm is an insurance company licensed in the State of Illinois and engaged in the business of insuring properties throughout the United States including Illinois, with its principal place of business in Bloomington, Illinois. It is authorized to write, sell, and issue insurance policies providing property and business income coverage. At all times material hereto, State Farm conducted and transacted business through the selling and issuing of insurance policies, including, but not limited to, selling and issuing property coverage to Evanston Grill.

III. JURISDICTION AND VENUE

6. Pursuant to 735 ILCS 5/2-209, this Court has personal jurisdiction over State Farm because State Farm issued an insurance policy to Plaintiff in Cook County, Illinois.

7. Venue in this county is proper pursuant to 735 ILCS 5/2-101, because the acts and omissions complained of occurred in this county.

IV. FACTS COMMON TO ALL COUNTS

8. In return for the payment of a premium, State Farm issued Policy No. 93-KH-H688-5 to Evanston Grill for a policy period of August 15, 2019 to August 15, 2020 (the "Policy"). (Policy Declarations and Relevant Forms attached hereto as Exhibit "A" and incorporated herein.)

9. Evanston Grill has performed all of its obligations under the Policy, including the payment of premiums.

10. Illinois Governor Pritzker issued Executive Order 2020-07 on March 15, 2020 requiring that all bars, restaurants, and movie theaters close to the public beginning on March 16, 2020 (hereinafter referred to as the “March 15, 2020 Closure Order”).

11. Executive Order 2020-07 prohibited the public from accessing Plaintiff’s restaurant, thereby causing the necessary suspension of their operations and triggering the Civil Authority coverage under the Policies. 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.”

12. Governor Pritzker’s March 20, 2020 Closure Order (Executive Order 2020-10) closed all “non-essential” businesses in Illinois (hereinafter referred to as the “March 20, 2020 Closure Order”) (the March 15, 2020 Closure Order and the March 20, 2020 Closure Order are collectively referred to as the “Closure Orders”).

13. Like the March 15, 2020 Closure Order, the March 20, 2020 Closure Order prohibited the public from accessing Plaintiff’s restaurant, thereby causing the necessary suspension of its operations and triggering the Civil Authority coverage under the Policies.

14. As a result of the Closure Orders, the Plaintiff has suffered substantial Business Income losses and incurred Extra Expense. The covered losses incurred by Plaintiff and owed under the Policies are increasing daily.

15. Following the Closure Orders, Plaintiff submitted a claim to State Farm requesting coverage for its business interruption losses promised under the Policy (collectively, the “Closure Order Claims”).

16. As a result of the Closure Orders, Plaintiff and the class were forced to lock their doors to customers and substantially reduce its normal operations on March 16, 2020. Since that date, and continuing to the present, Plaintiff has not been operating.

17. The Closure Orders prohibited access to Plaintiff and the other Class members' Covered Property in response to dangerous physical conditions resulting from a Covered Cause of Loss.

18. Through no fault of its own, Plaintiff and the class have suffered a loss of revenue in excess of \$100,000 in the month of April 2020, as compared to April 2019 – a decrease attributable to the Closure Orders.

19. The Policy was issued to Plaintiff at its principal place of business located at 1047 Chicago Ave # B, Evanston, Illinois 60202 and the property at this address is the premises covered under the Policy.

20. The Policy issued to Plaintiff is an "all risk" commercial property policy, which covers loss or damage to the covered premises resulting from all risks other than those expressly excluded.

21. Plaintiff paid substantial premiums to State Farm in exchange for State Farm's promises to provide the insurance coverage set forth in the Policy.

22. The Declarations for the Policy include an endorsement for coverage of "Loss of Income and Extra Expense." The standard form for Loss of Income and Extra Expense Coverage is identified as CMP-4705.

23. Pursuant to this provision, Defendant has promised to pay for the actual loss of business income sustained as a result of the suspension of Plaintiff and Class members' operations:

COVERAGES

1. Loss Of Income

a. We will pay for the actual “Loss Of Income” you sustain due to the necessary “suspension” of your “operations” during the “period of restoration.” The “suspension” must be caused by accidental direct physical loss to the property at the described premises. The loss must be caused by a Covered Cause Of Loss ...

24. The Loss of Income and Extra Expense Coverage (CMP-4705) also includes coverage for losses resulting from an action of Civil Authority:

4. Civil Authority

a. When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual “Loss of Income” you sustain and necessary “Extra Expense” caused by action of civil authority that prohibits access to the described premises ...

25. Plaintiff has suffered a direct physical loss to its property due to the suspension of their business operations from the Closure Orders.

26. The Closure Orders physically prohibited customers from entering the Evanston Grill thus causing a Physical Loss.

27. The Closure Orders rendered the Plaintiff’s property uninhabitable and unusable as a restaurant.

28. The Closure Orders caused a direct physical loss to the property because the doors were physically locked to keep customers out in compliance with Closure Orders.

29. Properties within one mile the Evanston Grill were frequented by individuals infected with COVID-19 and, upon information and belief, nearby properties were physically impacted by COVID-19 including one restaurant in Evanston where the owner was killed by COVID-19.

30. Properties within one mile of the Evanston Grill were physically damaged by COVID-19.

31. The Closure Orders were implemented in response to the dangerous physical condition of persons infected by COVID-19 being within one mile of the Evanston Grill.

32. A “Covered Cause of Loss” is defined by the Policy in standard form CMP-4100,

as:

We insure for accidental direct physical loss to Covered Property unless the loss is:

1. Excluded in SECTION I – EXCLUSIONS ...

36. The Policy includes an Exclusion for “Ordinance Or Law,” which is defined as “[t]he enforcement of any ordinance or law ... [r]egulating the construction, use or repair of any property [or] requiring the tearing down of any property[.]”

33. The Closure Orders do not qualify as an Ordinance or Law excluded under the Policy because they do not regulate construction nor do they require the tearing down of any property.

34. The Policy includes an Exclusion for “Governmental Action,” which is defined as the “[s]eizure or destruction of property by order of governmental authority.”

35. The Closure Orders did not constitute a seizure or destruction of Plaintiff’s property, and as such, the Exclusion for Governmental Action does not apply.

36. The Policy also includes an Exclusion for “Fungi, Virus or Bacteria,” which excludes coverage of losses from:

(2) Virus, bacteria or other microorganism that induces or is capable of inducing physical distress, illness or disease; and

(3) We will also not pay for:

(a) Any loss of use or delay in rebuilding, repairing or replacing covered property, including any associated cost or expense, due to interference at the described premises or location of the rebuilding, repair or replacement of that property, by “fungi”, wet or dry rot, virus, bacteria or other microorganism;

(b) Any remediation of “fungi”, wet or dry rot, virus, bacteria or other microorganism, including the cost or expense to:

i. Remove the “fungi”, wet or dry rot, virus, bacteria or other microorganism from Covered Property or to repair, restore or replace that property;

ii. Tear out and replace any part of the building or other property as needed to gain access to the “fungi”, wet or dry rot, virus, bacteria or other microorganism; or

iii. Contain, treat, detoxify, neutralize or dispose of or in any way respond to or assess the effects of the “fungi”, wet or dry rot, virus, bacteria or other microorganism; or

(c) The cost of any testing or monitoring of air or property to confirm the type, absence, presence or level of “fungi”, wet or dry rot, virus, bacteria or other

microorganism, whether performed prior to, during or after removal, repair, restoration or replacement of Covered Property.

37. The Policy does not exclude coverage where the Civil Authority is caused by a Virus and only excludes when the property is physically harmed by Virus or Bacteria and specifically discusses issues of a Virus or Fungi on the insured premises.

38. Plaintiff's loss here was not caused by the presence of COVID-19 on its premises. Rather, Plaintiff's loss results directly from the Closure Orders, which have forced Plaintiff to suspend its operations.

39. State Farm cannot possibly prove the presence of COVID-19 at the Evanston Grill. This fact is dispositive.

40. On May 18, 2020, Plaintiff submitted a claim for loss of business income and extra expenses under the Policy as a result of social distancing/stay-at-home orders. The same day, on May 18, 2020, Defendant denied Plaintiff's claim (the "Denial Letter"). A copy of the Denial Letter is attached hereto as Exhibit "B".

41. In support of its denial of coverage, Defendants generally cited the above-referenced Exclusions.

42. None of the cited provisions exclude losses resulting from the Closure Orders, and as such, these orders are a Covered Cause of Loss under the Policy, an "all risk" commercial property insurance policy.

43. Defendant has similarly denied coverage statewide for lost income as a result of the Closure Orders.

V. CLASS ALLEGATIONS

44. Plaintiff brings this action on behalf of itself and the following class :

All Illinois businesses insured under a policy issued by State Farm with the same operative language as policy form numbers CMP4100, CMP-4705 with Business Interruption, Extra Expense and Civil Authority coverage that suffered loss of Business Income and/or Extra Expense caused by a Closure Order.

Excluded from the proposed Class are Defendant, their respective officers, directors, and employees, affiliates, legal representatives, heirs, successors, or assignees. Plaintiff reserves the right to amend the Class definition as necessary.

45. The precise number of class members for the Class are unknown to Plaintiff at this time but can be easily determined through appropriate discovery. Plaintiff believes that because Defendant is a large insurer based in the State of Illinois, the class of businesses affected by Defendant's practices described herein consists of over one thousand and businesses, or the class of businesses, affected are otherwise so numerous that joinder of all Class members is impractical.

46. The unlawful practice alleged herein is a standardized and uniform practice, employed by Defendant pursuant to standardized insurance policy language, and results in the retention by Defendant of insurance benefits properly owed to Plaintiff and the Class members.

47. The class definition will permit the court to reasonably ascertain whether any individual or entity is a member of the class as any individual who or entity that is insured by Defendant and that suffered loss of Business Income and/or Extra Expense caused by a Closure Orders.

48. Upon information and belief, Defendant uniformly refuses to pay hundreds of insureds for covered Closure Order-related losses.

49. The large size of the Class renders the Class so numerous that joinder of all individual members is impracticable.

50. Common questions of law and fact predominate in this matter because Defendant's misinterpretation of the policy language is uniform for all insureds with this policy and its

treatment of class members in denying claims is uniform. Upon information and belief, Defendant responds to every claim at issue with an identical or near identical form letter reserving its rights and refusing to honor the claim(s).

51. Plaintiff shares a common interest with all members of the putative Class in the objects of the action and the relief sought.

52. Questions of fact and law as to all putative class members predominate over any questions affecting any individual member of the putative class, including, but not limited to:

- a. Whether the Closure Orders are a covered loss under the Class Members' Policies;
- b. Whether, through the acts and conduct alleged above, Defendant violated its express or implied obligations to Class Members; and
- c. Whether Class Members have coverage for any substantially similar civil authority order in the future that limits or restricts the access to insureds' places of business and/or their operations.

53. Plaintiff's claims are typical of the claims of the Class because Defendant's breaches of their respective duties affected Plaintiff and the Class uniformly and in precisely the same manner.

54. Plaintiff will fairly and adequately represent and protect the interests of the putative class. Plaintiff has retained experienced class action counsel. The interests of Plaintiff are coincident with and not antagonistic to the interests of the Class.

55. The questions of law and fact common to the members of the putative class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

56. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all putative class members is impracticable. Moreover, because the damages suffered by individual members of the putative class may be

relatively small, the expense and burden of individual litigation makes it impossible for the members of the putative class to redress the wrongs done to them individually.

57. The putative class is readily definable and prosecution of the action as a class action will eliminate the possibility of repetitious litigation. There will be no difficulty in the management of this action as a class action.

IV. CLAIMS

**COUNT I
DECLARATORY JUDGMENT**

58. Plaintiff on behalf the Class, restates and realleges paragraphs 1 through 57, as though fully set forth herein as paragraph 58.

59. There is a dispute about whether Plaintiff and the Class members are entitled to coverage under the Policies for their loss(es) sustained and to be sustained in the future as described herein. Accordingly, Plaintiff is entitled to declaratory relief from this Court pursuant to 735 ILCS 5/2-701 on behalf of itself and the Class.

60. Plaintiff and the Class are entitled to and demand a declaration that:

- a. The losses incurred by Plaintiff and the Class members as the result of the Closure Orders are covered losses under the Policies;
- b. Defendant State Farm has not and cannot prove the application of any exclusion or limitation to the coverage for Plaintiff and the Class members losses alleged herein;
- c. Plaintiff and the Class members are entitled to coverage for their past and future Business Income loss(es) and Extra Expense resulting from the Closure Orders for the time period set forth in the Policies;

d. Plaintiff and the Class members have coverage for any substantially similar Closure Orders in the future that limits or restricts the access to Plaintiff's or the Class Members' places of business; and

e. Any other issue that may arise during the course of litigation that is a proper issue on which to grant declaratory relief.

61. Plaintiff and the Class members do not seek a determination or declaration of their damages resulting from the Closure Orders.

COUNT II **BREACH OF CONTRACT**

62. Plaintiff, individually and on behalf the Class, restates and realleges paragraphs 1 through 57, as though fully set forth herein as paragraph 62.

63. The Policy is an insurance contract under which State Farm 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.

64. Plaintiff has complied with all applicable provisions of the Policy, including payment of the premiums in exchange for coverage under the Policy, and yet State Farm has abrogated its insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

65. By denying coverage for any business losses incurred by Plaintiff in connection with the Closure Orders, State Farm has breached its coverage obligations under the Policy.

66. As a result of State Farm's breaches of the Policy, Plaintiff has sustained substantial damages for which State Farm is liable, in an amount to be established at trial.

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

67. Plaintiff, individually and on behalf the Class, restates and realleges paragraphs 1 through 57, as though fully set forth herein as paragraph 67.

68. Upon receipt of the Closure Order Claims, State Farm 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.

69. State Farm’s denials were vexatious and unreasonable.

70. State Farm’s denials constitute “improper claims practices” under Illinois law—namely State Farm’s (1) refusals to pay Plaintiff’s 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).

71. Therefore, pursuant to 215 ILCS 5/155, Plaintiff requests that, in addition to entering a judgment in favor of Plaintiff and against State Farm for the amount owed under the Policies at the time of judgment, the Court enter a judgment in favor of Plaintiff and against State Farm for an amount equal to the greater of (1) 60% of the amount which the trier of fact finds that Plaintiff is entitled to recover under the Policies, exclusive of costs; and (2) \$60,000 per Plaintiff. *See* 215 ILCS 5/155.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class pray for judgment against State Farm for:

- a) Finding that this action satisfies the prerequisites for maintenance as a class action as set forth in 735 ILCS 5/2-801, and certifying the proposed Class as defined herein;
- b) Designating Plaintiff as representative of the proposed Class, and Alexander N. Loftus, Esq. as Lead Counsel;
- c) Enter a declaratory judgment on Count I of the Complaint in favor of Plaintiff and against State Farm, declaring as follows: (1) The losses incurred by Plaintiff and the Class members as the result of the Closure Orders are covered losses under the Policies; (2) Defendant State Farm has not and cannot prove the application of any exclusion or limitation to the coverage for Plaintiff and the Class members losses alleged herein; (3) Plaintiff and the Class members are entitled to coverage for their past and future Business Income loss(es) and Extra Expense resulting from Closure Orders for the time period set forth in the Policies; (4) Enter a judgment on Count II of the Complaint in favor of Plaintiff and against State Farm and award damages for breach of contract in an amount to be proven at trial;
- d) Enter a judgment on Count III of the Complaint in favor of Plaintiff and against State Farm in the amount equal to amount equal to the greater of (1) 60% of the amount which the trier of fact finds that Plaintiff is entitled to recover under the Policy, exclusive of costs; and (2) \$60,000 per Plaintiff;
- e) Enter a judgment in favor of Plaintiff and against State Farm in an amount equal to all attorneys' fees and related costs incurred for the prosecution of this coverage action against State Farm, pursuant to 215 ILCS 5/155, which amount to be established at the conclusion of this action;
- f) Award to Plaintiff and against State Farm prejudgment interest, to be calculated according to law, to compensate Plaintiff for the loss of use of funds caused by State Farm's wrongful refusal to pay Plaintiff for the full amount in costs incurred in connection with Closure Order Claims;

- g) Award Plaintiff such other, further, and additional relief as this Court deems just and appropriate.

Respectfully Submitted,

/s/Alexander N. Loftus
One of Plaintiff's Attorneys

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