

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KAMINSKY DENTAL ASSOCIATES, P.C.
1500 Market Street
Philadelphia, PA 19102

Plaintiff

v.

**THE HARTFORD FINANCIAL SERVICES
GROUP, INC.**
690 Asylum Avenue
Hartford, CT 06155

Defendant.

CASE NO.: _____

**DECLARATORY
JUDGMENT ACTION**

COMPLAINT

Plaintiff, Kaminsky Dental Associates, P.C., by and through its undersigned counsel, in support of its actions for Declaratory Relief and damages, alleges the following:

I. NATURE OF CASE

1. This is a civil action seeking declaratory relief and damages with respect to a policy of insurance issued by Defendant, The Hartford Financial Services Group, Inc. (“The Hartford”), to Plaintiff, Kaminsky Dental Associates, P.C. (“KDA”).

2. As a result of the Coronavirus global pandemic and the governmental orders forcing the closure of KDA’s dental office, KDA made a claim to The Hartford for loss of business income and expenses.

3. The Hartford denied KDA’s claim for the reasons set forth in its correspondence dated March 20, 2020, a true and correct copy of which is attached hereto as Exhibit “A”.

4. The Hartford insurance policy is an “all-risk” policy which provides coverage for all causes of loss (covered perils) which are not specifically excluded or limited by the terms of the policy.

5. KDA’s losses of business income and expense were caused by one or more covered perils which are not specifically excluded or limited by the terms of The Hartford insurance policy.

6. Declaratory relief requiring The Hartford to afford coverage to KDA for its loss of business income and expenses is, therefore, appropriate.

7. If relief favorable to KDA is declared by the Court, KDA also seeks an award of damages for its loss of business income and expenses.

II. JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332 because there is complete diversity of citizenship between KDA and The Hartford.

9. Additionally, KDA has suffered business losses in an amount greater than \$150,000.

10. The Court has personal jurisdiction over The Hartford because at all times relevant and material hereto, The Hartford solicited, conducted and transacted business in the Commonwealth of Pennsylvania from which it derived substantial revenue.

11. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because a substantial part of the events giving rise to KDA’s claim occurred in this District, and because KDA’s dental practice/office is situated in this District.

12. Venue is also proper in this District pursuant to 28 U.S.C. §1391(c) because The Hartford, as a corporation, has substantial, systematic and continuous contacts in the Commonwealth of Pennsylvania, thereby subjecting it to personal jurisdiction in this District.

III. THE PARTIES

13. KDA is a professional corporation duly licensed to operate a dental practice with a principal dental office located at 1500 Market Street, Philadelphia, PA 19102.

14. It is believed and, therefore, averred that The Hartford is a corporation doing business in the County of Philadelphia, Commonwealth of Pennsylvania, with a corporate office located at 690 Asylum Avenue, Hartford, Connecticut 06155.

15. More specifically, The Hartford's business includes the transacting of insurance written by Sentinel Insurance Company, Limited ("Sentinel"), a stock insurance company of The Hartford, with a business address of One Hartford Plaza, Hartford, Connecticut, 06155.

IV. FACTUAL BACKGROUND

A. Insurance Coverage

16. On or about November 14, 2018, The Hartford processed and issued a contract of insurance, through Sentinel, to KDA whereby KDA agreed to make premium payments to The Hartford in exchange for The Hartford's promise to indemnify KDA for covered losses including, but not limited to, the loss of business income and expenses at KDA's dental office at 1500 Market Street, Philadelphia, PA 19102 ("the Insured Location").

17. Rande S. Kaminsky, D.M.D. ("Dr. Kaminsky") is the President and sole shareholder of KDA, a multi-specialty group practice ("the dental group"), who attends to dental patients at the Insured Location.

18. The dental group attends to, on average, 225 patients per week at the Insured Location.

19. Dr. Kaminsky's office hours at the Insured Location are Monday through Thursday, 8 a.m. to 5 p.m. and Friday, 8 a.m. to 1 p.m.

20. The Insured Location, at all times material hereto, has been and continues to be covered by Policy Number 44 SBA PO5373 DW, with an effective policy period from January 20, 2020 to January 20, 2021, which was issued by The Hartford as a "Spectrum Policy" ("the Policy").

21. The Policy consists of Declarations, Coverage Forms, Common Policy Conditions, and any other Forms and Endorsements issued to be a part of the Policy, a certified copy of which is attached hereto as Exhibit "B".

22. That section of the Policy which is applicable to KDA's claim for loss of business income and expenses is the "Special Property Coverage Form".

23. In exchange for KDA's payment of premiums, The Hartford agreed to "pay for direct physical loss of or physical damage to Covered Property at the premises described in the Declarations (also called 'scheduled premises' in this policy) caused by or resulting from a Covered Cause of Loss."

24. The Policy has been and continues to be in effect as a result of KDA paying its premiums on a current basis.

25. The Policy is commonly referred to as an "all-risk" policy which means that The Hartford has agreed to indemnify KDA for losses sustained due to "Covered Causes of Loss".

26. The Policy defines Covered Causes of Loss as:

RISKS OF DIRECT PHYSICAL LOSS unless

the loss is:

- a. Excluded in Section **B., Exclusions**; or
- b. Limited in Paragraph **A.4. Limitations**; that follow.

27. The losses covered under the subheading “Additional Coverage” in the Policy include the loss of “Business Income”, “Extra Expense” and “Extended Business Income”.

28. The Hartford has denied insurance coverage for such losses when, in fact, such losses were caused by perils which are not specifically excluded or limited under the terms of the Policy.

B. Physical Loss at the Insured Location

29. The pandemic caused by the novel Coronavirus, also known as “COVID-19”, resulted in a series of orders from state and local governmental authorities which effectively closed Dr. Kaminsky’s dental practice at the Insured Location.

30. On March 6, 2020, Pennsylvania Governor Tom Wolf issued a Proclamation of Disaster Emergency, the first formal recognition of a state of emergency in the Commonwealth as a result of COVID-19, a copy of which is attached hereto as Exhibit “C”.

31. On March 16, 2020, the City of Philadelphia announced the closure of non-essential businesses, including dental practices like KDA, a copy of which is attached hereto as Exhibit “D”.

32. On March 19, 2020, Governor Wolf issued an Order requiring all non-life sustaining businesses in the Commonwealth to cease operations and close all physical locations, a copy of which is attached hereto and marked Exhibit “E”.

33. On March 23, 2020, Governor Wolf issued a Stay-at-Home Order for residents of Philadelphia, Allegheny, Bucks, Chester, Delaware, Monroe and Montgomery Counties, a copy of which is attached hereto as Exhibit “F”.

34. On that same date, the Pennsylvania Department of Health issued a similar Order noting that the “operation of non-life sustaining businesses present the opportunity for unnecessary gatherings, personal contact and interaction that will increase the risk of transmission and the risk of community spread of COVID-19.” A copy of said Order is attached hereto and marked as Exhibit “G”.

35. On April 1, 2020, Governor Wolf extended the March 23, 2020 Stay-at-Home Order to the entire Commonwealth of Pennsylvania, a copy of which is attached hereto as Exhibit “H”.

36. These Orders and, particularly Governor Wolf’s Order of March 16, 2020, forced the closure of the KDA Insured Location as of March 16, 2020.

37. The KDA Insured Location remains closed indefinitely, thereby causing a loss of possession and rendering the same useless.

38. As a result of the government-ordered closure of the KDA Insured Location depriving Dr. Kaminsky of the use of the same, KDA has sustained and will continue to sustain indefinitely the loss of business income and expenses, to the great detriment and loss of KDA.

V. FIRST CAUSE OF ACTION – DECLARATORY JUDGMENT

39. KDA incorporates herein by reference averments 1-38 above as if fully set forth at length.

40. The Declaratory Judgment Act provides that in “a case of actual controversy within its jurisdiction ... any court of the United States ... may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. §2201(a).

41. An actual controversy exists between KDA and The Hartford regarding the right of KDA to be afforded insurance coverage by The Hartford for the loss of business income and expenses, and The Hartford's duties and responsibilities to provide such coverage to KDA under the terms of the Policy.

42. An actual controversy between KDA and The Hartford has arisen by virtue of the explanations for the denial of coverage set forth in The Hartford's correspondence dated March 20, 2020 (See Exhibit "A"), which KDA maintains are invalid for the following reasons:

- a. the aforementioned Orders issued by state and local authorities as a result of the COVID-19 pandemic were fortuitous circumstances which created a reasonable expectation on the part of KDA that The Hartford would provide coverage for the loss of business income and expenses;
- b. the Policy's use of the phrase "direct physical damage to **or** physical loss of" [emphasis added], as an undefined term in the Policy is, therefore, ambiguous and should be construed liberally in favor of affording coverage to KDA;
- c. the use of the disjunctive "or" implies that "physical damage" is an occurrence which is distinct from "physical loss";
- d. "physical loss" can be liberally defined to include deprivation, loss of possession, loss of use, loss of utility and loss of access;
- e. Dr. Kaminsky's inability to use the KDA dental office to operate his dental practice as a direct result of Governor Wolf's Order of March 16, 2020, rendering the same unusable, caused a direct physical loss for its intended purpose;
- f. Governor Wolf's Orders of March 16, 2020, March 19, 2020 and March 23, 2020, amounted to Governmental Action not specifically excluded under the terms of the Policy and, therefore, a separate and distinct covered cause of loss;
- g. the Exclusion for "Virus" under the terms of the "Limited Fungi, Bacteria or Virus Coverage" Endorsement Form SS 40 93 07 05 ("the Virus Exclusion") is also ambiguous and, therefore, must be construed narrowly against the interests of The Hartford and in favor of KDA as the insured;
- h. the Virus Exclusion, as written in the Policy, cannot be relied upon by The Hartford as a basis to deny insurance coverage to KDA; and

- i. any of the other Exclusions in the Policy upon which The Hartford may rely are inapplicable and, therefore, invalid bases for denying insurance coverage to KDA.

43. Resolution of the duty and responsibility of The Hartford to provide insurance coverage to KDA for the loss of business income and expenses under the terms of the Policy, is necessary to clarify the legal relations between the parties and afford relief from uncertainty.

44. KDA seeks a declaration that its ongoing loss of business income and expenses is caused by a covered cause of loss under the terms of the Policy.

WHEREFORE, Plaintiff, Kaminsky Dental Associates, P.C., respectfully requests that this Honorable Court enter an Order declaring that the Order issued by Governor Tom Wolf, Governor of the Commonwealth of Pennsylvania, dated March 16, 2020, closing non-essential businesses, March 19, 2020, closing all non-life sustaining businesses, and the March 23, 2020 Stay-at-Home Order, resulting in the closure of Plaintiff's dental practice, constituted covered causes of loss under the terms of Policy #44 SBA PO5373 issued by Defendant, The Hartford Financial Services Group, Inc., to Plaintiff, thereby entitling Plaintiff to insurance coverage for the loss of business income and expenses in accordance with the terms of said Policy.

VI. SECOND CAUSE OF ACTION - BREACH OF CONTRACT

45. KDA incorporates herein by reference averments 1-44 above as though fully set forth at length.

46. In the event the Court enters an Order for the Declaratory Relief sought by KDA, this second cause of action for Breach of Contract is included for the purpose of recovering damages which would be incidental to such an Order.

47. As a result of the closure of KDA's dental practice at the Insured Location, KDA has sustained a loss of business income and expenses for which KDA has requested indemnification from The Hartford under the terms of the Policy.

48. More specifically, KDA seeks indemnification for the loss of Business Income, Extra Expense and Extended Business Income as those terms are defined in the Policy, including all Endorsements applicable thereto.

49. KDA's losses commenced on or about March 19, 2020, are currently ongoing and expected to continue to accrue.

50. KDA has previously made a claim for such losses to The Hartford which has perfunctorily denied the claim in derogation of its duties and responsibilities under the terms of the Policy.

51. The aggregate value of the monthly loss of business income and expense for KDA exceeds \$150,000.

WHEREFORE, Plaintiff, Kaminsky Dental Associates, P.C. demands judgment against Defendant, The Hartford Insurance Group, in an amount in excess of \$150,000, with the full extent of damages to be assessed and proven at trial, together with such other relief which the court deems appropriate.

FRIEDMAN SCHUMAN, P.C.



Date: 05/27/2020

By: _____
Robert H. Nemeroff (Atty. # 34681)
101 Greenwood Avenue, 5th Floor
Jenkintown, PA 19046
P: 215-690-3827
E: rnemeroff@fsalaw.com
Attorney for Plaintiff