

**IN THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION**

LANE-GLO BOWL, INC.

a Domestic Corporation,
Plaintiff,

vs

Case No. _____

CERTAIN UNDERWRITERS AT
LLOYDS LONDON, a/k/a LLOYD'S OF LONDON,
UNDERWRITERS AT LLOYDS,
UNDERWRITERS AT LLOYD'S, LONDON WHO
SUBSCRIBE TO POLICY NUMBER
AVS011443300

a Foreign corporation,
Defendant,

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW, the Plaintiff, LANE-GLO BOWL, INC., by and through its undersigned Attorney, and files this it's complaint against the Defendant, CERTAIN UNDERWRITERS AT LLOYDS LONDON, a/k/a LLOYD'S OF LONDON, UNDERWRITERS AT LLOYDS, UNDERWRITERS AT LLOYD'S, LONDON WHO SUBSCRIBE TO POLICY NUMBER AVS011443300, and alleges:

JURISDICTION

1. The matter in controversy exceeds the sum of \$30,000.00 exclusive of interest, attorney's fees and costs.

2. Plaintiff, LANE-GLO BOWL, INC., was, at all times material to the allegations in this Complaint, a Corporation organized and existing under the laws of the State of Florida and engaged in the business of running bowling allies with located in New Port Richey and Port Richey, Florida.

3. Defendant, CERTAIN UNDERWRITERS AT LLOYDS LONDON, a/k/a LLOYD'S OF LONDON, UNDERWRITERS AT LLOYDS, UNDERWRITERS AT LLOYD'S, LONDON WHO SUBSRCIBE TO POLICY NUMBER AVS011443300, is and at all times material to the allegations in this Complaint was an administrative body which provides premises and other support services to a complex and unique international insurance market through subscribers underwriting policy number AVS011443300 who are identified as a Lloyd Syndicate namely TRV, ENH, Indian Harbor Insurance Company, HDI Global Specialty SE, NEO, XLC, TAL, TRV, AGR, ACS, NVA, HDU, PPP, XLC, TRV, AMA, ACS, ASC AND VSM who are all listed by Agreement Reference number in the subject policy of insurance and agreed to insurer LANE-GLO BOWL, INC.

4. Defendant is authorized and licensed to do business in the State of Florida and was able to underwrite insurance in the State of Florida. Defendant is considered a surplus lines or foreign insurance company for jurisdictional purposes because at least two of the syndicates have principle places of business in other states, specifically HDI Global Specialty SE who has a principle place of business in New York, NY and Indian Harbor Insurance Company who has a principle place of business in Exton, Pennsylvania,

all who have an agent in Hillsborough County, Florida making venue proper in Hillsborough County, Florida pursuant to Florida Statute Section 47.051.

COMMON ALLEGATIONS

5. At all times material to this action, there was in existence, a policy of insurance issued underwritten by Defendant to Plaintiff, providing coverage to Plaintiff's property located at 8631 Country Road 54, New Port Richey, Florida 34653 and 6935 Ridge Road, Port Richey, Florida 34668. To the best of Plaintiff's information and belief, a copy of the subject policy is attached hereto as Exhibit "A" and is incorporated by reference herein. However, this might not be the full and complete copy. Plaintiff would allege that the Defendant has a full and complete copy of the subject policy of insurance.

6. The subject insurance policy, among other things, provides coverage for loss of business income and extra expense caused by action of civil authority that prevents access to the insured premises as more specifically set forth in Form CP 00 32 10 12 which provides in pertinent part as follows:

. . .
4. Additional Coverages

b. Civil Authority

In this Additional Coverage – Civil Authority, the described premises are premises to which this Coverage Form applies, as show in the declarations.

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 Business Income you sustain caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

(1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and

(2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or consultation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property. Civil authority Coverage will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

7. This coverage was changed by endorsement as follows:

F. The following applies to the **Additional Coverage – Civil Authority** under the Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form and Extra Expense Coverage Form:

1. The Additional Coverage – Civil Authority includes a requirement that the described premises are not more than one mile from the damaged property. With respect to described premises located in Florida, such one-mile radius does not apply.
2. The Additional Coverage – Civil Authority is limited to a coverage period of up to four weeks. With respect to described premises located in Florida, such for week period is replaced by a three-week period.
3. Civil Authority coverage is subject to all other provisions of that Additional Coverage.

8. On or about March 25, 2020, the Pinellas County Board of Commissioners issued a Civil Authority Order closing non essential storefront businesses, all of which is more particularly described in the copy of said Order attached hereto as Exhibit “B” which is incorporated by reference herein.

9. Plaintiff alleges that to the best of Plaintiff’s information and belief, Get Air Trampoline Park located at 7431 FL-54, New Port Richey, Florida 34653 located approximately 1.4 miles from Plaintiff’s 8631 location was likewise shut down due to the attached order.

10. Plaintiff alleges that to the best of Plaintiff's information and belief SpinNations Family Skating & Event Center located at 8345 Congress Street, Port Richey, Florida 34668, which is located approximately 0.8 miles from Plaintiff's 6935 location, was likewise shut down due to the attached order.

11. Plaintiff further alleges that this order from Pinellas County Board of Commissioners was in response to the state of emergency in Pinellas County which, as outlined in the attached order, was issued in response to a threat to the public health as more specifically described in the order.

COUNT I – BREACH OF CONTRACT

12. Plaintiff re-alleges and incorporates allegations one (1) through eleven (11) above.

13. Plaintiff suffered a loss of business income caused by the above mentioned action of civil authority that prohibited access to property near Plaintiff's property as well as Plaintiff's bowling alley because access to the property was prohibited by order of a civil authority as the direct result of a covered cause of loss to property in the immediate area of Plaintiff's property as well as Plaintiff's property under the terms and conditions of the policy quoted above.

14. Under the terms and conditions of the subject policy, Defendant is obligated to pay Plaintiff's actual loss of business income and any other extra expense caused by the action of civil authorities pursuant to the terms and conditions of the subject policy.

15. Plaintiff submitted a claim for business income and extra expense losses caused by the above mentioned actions of civil authority to the Defendant with a date of loss of March 27, 2020.

16. By letter dated May 22, 2020, Defendant denied coverage for the subject claim. Attached as Exhibit "C" is a copy of the denial letter.

17. Because of Defendant's failure to pay Plaintiff's claim, Defendant has materially breached the terms and conditions of the subject policy.

18. As a result of the breach, Plaintiff has suffered damages in the form of lost business income which Plaintiff alleges is covered under the subject policy of insurance.

19. All conditions precedent to recover under the subject policy have been performed by the Plaintiff or waived by the Defendant.

20. Because of Defendant's breach of the subject insurance policy, Plaintiff has had to retain the services of the undersigned attorneys and have agreed to pay the undersigned attorneys a reasonable fee.

WHEREFORE, Plaintiff, Lane-Glo Bowl, Inc., demands judgment for damages, together with interest, costs and reasonable attorneys fees, pursuant to Section 627.428, Florida Statutes, together with such other and further relief which the Honorable Court may deem proper and demands trial by jury on all issues so triable by jury.

COUNT II – DECLARATORY JUDGMENT

21. Plaintiff re-alleges and incorporates allegations one (1) through eleven (11) above.

22. This is an action for Declaratory Judgment to determine liability under the subject insurance policy pursuant to Chapter 86, Florida Statutes.

23. Plaintiff contends that the subject claim for business interruption is a covered cause of loss because the order of civil authority prevented access to Plaintiff's property and caused the business to be shut down.

24. Defendant denied the claim of Plaintiff alleging that the subject policy did not provide coverage for multiple reasons.

A. Direct Physical Damage

25. Defendant's first basis for denial was that there was no direct physical damage to business personal property at the insured premises.

26. The subject policy under civil authority provides as follows:

4. Additional Coverages

b. Civil Authority

In this Additional Coverage – Civil Authority, the described premises are premises to which this Coverage Form applies, as show in the declarations.

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 Business Income you sustain caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

(1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and

(2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or consultation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil authority Coverage will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and

will apply for a period of up to four consecutive weeks from the date on which such coverage began.

27. Plaintiff alleges that this additional coverage only requires “damage” due to a covered cause of loss and does not required “direct physical loss or damage” as the Defendant has asserted. This coverage does not require direct physical loss or physical damage to either the immediate property or the insured property. Further, Defendant appears to be arguing that a Covered Cause of Loss under the subject policy requires direct physical loss of or physical damage to Covered Property; however, Plaintiff alleges that the civil authority additional coverage section does not require direct physical loss of or physical damage, only that the loss is caused by a Covered Cause of Loss.

28. The above quoted policy provision is ambiguous and unclear as to whether or not direct physical loss of or physical damage is required at other property or even the insured premises to trigger civil authority coverage and a reasonable interpretation of the policy should be that if property around the insured location suffers damage, not direct physical loss or damage which is a covered cause of loss, and a civil authority prevents access to that property as well as the insured property, there is coverage for the business interruption loss.

29. Plaintiff contends that Defendant has erroneously construed the subject insurance policy to require direct physical damage and that civil authority coverage is only applicable when access to the described premises is prohibited due to direct physical damage to other property. Plaintiff alleges they are entitled to recover damages for

business interruption due to civil authority because other businesses were likewise shut down due to action of civil authority, causing damage to the business.

B. No Loss of Access

30. Secondly, Defendant based its denial of Plaintiff's claim on the allegation that there was no loss of access to the property alleging that the Plaintiff could have maintained partial operations.

31. Plaintiff alleges that the closure by civil authority is a covered cause of loss and that the Plaintiff could not maintain its operations, which is operating as a bowling alley. Plaintiff further alleges that the subject policy is an all risk policy which provides that the loss is covered unless specifically excluded.

32. The provisions in the civil authority section referring to "prohibit access to the described premises" is ambiguous and unclear as to what should be considered prohibited access and if the lack of the ability to maintain full operations is a denial of access to the business. A reasonable interpretation of the policy should be that if the business is prohibited from operating at full capacity by order of civil authority, there is a prohibition of access to the property which is therefore covered as a business interruption loss.

33. Plaintiff contends that Defendant has erroneously construed the subject insurance policy and that Plaintiff is entitled to recover damages for business interruption due to civil authority.

C. There was no damage to Other Property

34. Third, Defendant based its denial of Plaintiff's claim on the allegation that there was no action taken in response to dangerous physical conditions resulting from the

damage or continuation of the Covered Cause of Loss that caused the damage, or the action is take to enable a civil authority to have unimpeded access to the damaged property.

35. Plaintiff alleges that the closure by civil authority is damage which is a covered cause of loss because it is not specifically excluded under the all risk policy. The order of civil authority prevented businesses from operating. Plaintiff has cited two businesses but because the distance limitation was removed, Plaintiff would allege that any other business that was shut down due to civil authority meets the requirement of the subject policy because they suffered damage to their business.

36. The provisions in the civil authority section referring to “prohibit access to the described premises” is ambiguous and unclear as to what should be considered prohibited access and if the lack of the ability to maintain full operations is a denial of access to the business. A reasonable interpretation of the policy should be that if the business is prohibited from operating by order of civil authority there is a prohibition of access to the property, this prohibition from operating the business is damage and therefore the damage to Plaintiff’s business is covered as a business interruption loss.

37. Plaintiff contends that Defendant has erroneously construed the subject insurance policy and that Plaintiff is entitled to recover damages for business interruption due to civil authority.

D. Delay, Loss of use or loss of market

38. The Defendant asserts that the loss is excluded based on the following exclusion:

B. Exclusions

2. We will not pay for physical loss or physical damage caused by or resulting from:

a. Consequential Losses; Delay, loss of use or loss of market

39. Plaintiff alleges that this definition is ambiguous as to what is meant by “loss of use” or “loss of market”. The policy does not define these terms and Plaintiff would allege that any loss of use caused by a covered cause of loss would be covered because the cause of the claim or damage was the covered cause of loss not the resulting loss of use. Further Plaintiff would allege that there was not loss of market in terms of business but instead, the loss of business was caused by the civil authority order, not a loss of market. Finally, Plaintiff is not claiming physical loss or physical damage caused by loss of use or loss or market and therefore this exclusion should not apply.

40. Plaintiff contends that Defendant has erroneously construed the subject insurance policy as well as this exclusion and that Plaintiff is entitled to recover damages for business interruption due to civil authority.

C. Pollutant Exclusion

41. The Defendant further bases the denial of the claim by relying on the pollution exclusion which Plaintiff alleges does not apply. The subject policy provides as follows:

2. We will not pay for physical loss or physical damage caused by or resulting from:

I. Discharge, dispersal, seepage, migration, release or escape of “pollutants and contaminants” unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the “specified causes of loss.” But if physical loss or physical damage by the “specified causes of loss” results, we will pay of the resulting physical loss or physical damage caused by the “specified cause of loss.”

H. Definitions

2. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

42. Plaintiff alleges that this definition is ambiguous as to whether or not it would include a virus within the definition. Plaintiff alleges that the COVID-19 virus is not considered a solid, liquid, gaseous or thermal irritant or contaminant and is not a waste. Therefore, Plaintiff alleges that this definition and any attempt to use this definition to exclude the loss are not applicable.

43. Plaintiff contends that Defendant has erroneously construed the subject insurance policy by alleging that Coronavirus is an irritant or contaminant which causes or threatens to cause physical impurity. Plaintiff would allege a reasonable interpretation of this exclusion would be if a pollutant infected Plaintiffs business product it would be excluded. Plaintiff alleges that it is entitled to recover damages for business interruption due to civil authority because the virus is not a pollutant.

E. Acts or Decisions Exclusion

44. Defendant is contending that the loss is excluded based on the decision of a person, group, organization or governmental body. The specific policy provides as follows:

3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in the Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of loss.

b. Acts or Decisions. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

45. Plaintiff alleges that this exclusion is ambiguous. Plaintiff alleges that this exclusion only excludes a loss if the loss was caused by an act or a failure to act or decide, of any person, group, organization or governmental body. Plaintiff would allege the loss is not the result of an action or decision of a governmental body but was the caused by the denial of access to the subject property by civil authority which is expressly covered in the subject policy.

46. Plaintiff contends that Defendant has erroneously construed the subject insurance policy as well as this exclusion and that Plaintiff is entitled to recover damages for business interruption due to civil authority.

47. Plaintiff is in doubt of its rights and obligations under the subject policy as to whether Defendant is required to pay the business interruption claim under the terms and conditions of the subject policy.

48. An actual controversy of a justiciable nature as to whether Plaintiff is entitled to recover business interruption damages under the subject policy exists between Plaintiff and Defendant involving the rights and liabilities of Plaintiff and Defendant under the policy of insurance attached hereto and Plaintiff is in doubt as to its rights under the subject policy.

49. The controversy existing between Plaintiff and Defendant may be determined by a judgment of this Honorable Court without the necessity of other law suits.

50. Plaintiff has no other adequate remedy of law.

51. Because of Defendant's wrongful denial of Plaintiff's claim, Defendant has materially breached the terms and conditions of the subject policy.

52. All conditions precedent to recovery under the subject policy has been performed by Plaintiff and its agent or waived by Defendant.

53. Because of Defendant's breach of the subject insurance policy, Plaintiff has had to retain the services of the undersigned attorneys and agreed to pay the undersigned attorneys a reasonable fee.

WHEREFORE, Plaintiff, LANE-GLO BOWL, INC., demands judgment declaring that Defendant, CERTAIN UNDERWRITERS AT LLOYDS LONDON, a/k/a LLOYD'S OF LONDON, UNDERWRITERS AT LLOYDS, UNDERWRITERS AT LLOYD'S, LONDON WHO SUBSRCIBE TO POLICY NUMBER AVS011443300, is required to pay Plaintiff the damages resulting from the above business interruption claim and that judgment be entered for Plaintiff's damages, together with interest, costs and reasonable attorneys fees pursuant to Section 627.428, Florida Statutes, together with such other and further relief which this Honorable Court may deem proper and demands trial by jury on all issues so triable by jury.

/s/ *Ronald S. Haynes*

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