

time thereafter as part of the State of Illinois' and State of North Carolina's efforts to slow the spread of the COVID-19 global pandemic.

4. The closures mandated by the States' orders present an existential threat to small local businesses such as Plaintiff.

5. To protect its business from situations like these, which threaten its continued existence based on factors outside its control, Plaintiff obtained, *inter alia*, business interruption insurance from Defendant.

6. At all times relevant, Defendant insured Plaintiff pursuant to an insurance policy drafted by Defendant. A copy of the full insurance policy at issue, policy number ENP 043 76 90, is attached hereto as Exhibit A (the "Policy"). Defendant delivered the Policy to Plaintiff at its principal place of business located in the State of Illinois, and the Policy insures Plaintiff's property, business operations, and potential liabilities in connection with Plaintiff's business operations in Illinois and North Carolina.

7. In breach of its insurance obligations that it voluntarily undertook in exchange for Plaintiff's premium payments, Defendant has denied Plaintiff's claims arising from the State-ordered interruption of its business.

8. As a result, Plaintiff now brings this action against Defendants for the failure to honor its obligations under the commercial business owners insurance Policy issued to Plaintiff, which provides coverage for losses incurred due to a necessary suspension of its operations, including when Plaintiff is forced to close due to a government order.

9. On March 16, 2020, during the term of the Policy issued by Defendant to Plaintiff, Illinois Governor JB Pritzker issued an order first closing all restaurants, bars, and movie theaters to the public in an effort to address the ongoing COVID-19 pandemic. A few

days later, on March 20, 2020, Governor Pritzker ordered all “non-essential businesses” to close. One week later, on March 27, 2020, North Carolina Governor Roy Cooper issued a similar stay at home order, ordering North Carolina residents to stay at home and ordering all non-essential businesses in North Carolina to cease all activities. The Illinois and North Carolina orders are hereinafter collectively referred to as the “Closure Orders.”

10. Due to the Closure Orders and the COVID-19 virus crisis, Plaintiff was effectively shut down during the duration of the crisis until further order of the respective Governors. Plaintiff was forced to close its main office in Illinois and its warehouse in North Carolina, lay-off many of its employees, and halt ordinary operations, resulting in substantial lost revenues.

11. Defendant has been paid premiums and is contractually obligated to cover losses related to this work shut down.

12. But despite Defendant’s promise in the Policy to cover the Plaintiff’s business interruption losses when the government forces it to close, Defendant has issued a denial to Plaintiff for any losses related to the Closure Orders – within a very short period of receiving Plaintiff’s claims – and without first conducting any meaningful coverage investigation, let alone a “reasonable investigation based on all available information” as required under Illinois law.

13. A copy of the denial to Plaintiff’s claim is attached hereto as Exhibit B. It claims in relevant part Defendant “found no evidence of direct physical loss or damage at your premises” and that “there is no evidence of damage to property at other locations, precluding coverage for orders of civil authority.”

14. Defendant's denial of coverage is based on its assertion that the presence of coronavirus, which led to the Closure Orders that prohibited Plaintiff from operating its business, does not constitute "direct physical damage."

15. But Defendant's conclusory statement that the actual or alleged presence of a substance like COVID-19 does not result in property damage is contrary to the law in Illinois. Illinois courts have held that the presence of a dangerous substance in a property may in fact constitute "physical loss or damage."

16. Moreover, unlike many commercial property policies available in the market, the Policy sold by Defendant does not include an exclusion for loss caused by a virus. The Policy has rules and conditions regarding bacteria, but virus is not a bacterium.

17. Thus, Plaintiff reasonably expected that the insurance policy it purchased from Defendant included coverage for property damage and business interruption losses caused by viruses like the COVID-19 coronavirus.

18. If Defendant had wanted to exclude pandemic-related losses under the Plaintiff's Policy, it easily could have attempted to do so with an express exclusion. Instead, Defendant waited until after it collected Plaintiff's premiums, and after a pandemic and the resulting Closure Orders caused catastrophic business losses to Plaintiff, to try to limit its exposure on the backend through its erroneous assertion that the presence of coronavirus is not "physical loss" and, therefore, is not a covered cause of loss under the Policy.

19. The insurance industry has created specific exclusions for pandemic related losses under similar commercial property policies.

20. The fact that the insurance industry has created specific exclusions for pandemic related losses under similar commercial property policies undermines Defendant's assertion that the presence of a virus, like the coronavirus, does not cause physical loss or damage to property.

21. Thus, Defendant's wholesale, cursory coverage denial is arbitrary and unreasonable, and inconsistent with the plain law in Illinois, and the facts and plain language of the Policy it issued. The denial appears to be driven by Defendant's desire to preempt its own financial exposure to the economic fallout resulting from the COVID-19 crisis, rather than to initiate, as Defendant is obligated to do, a full and fair investigation of the claims and a careful review of the Policy it sold to Plaintiff in exchange for valuable premiums.

22. As a result of Defendant's wrongful denial of coverage, Plaintiff files this action for a declaratory judgment establishing that it is entitled to the benefit of the insurance coverage it purchased, for indemnification of the business losses it has sustained, for breach of contract, and for bad faith claims handling under 215 ILCS 5/155.

PARTIES

23. Plaintiff is a Nevada corporation with a principal place of business located at 391 Wegner Drive, Suite E, West Chicago, Illinois.

24. Defendant is an insurance company engaged in the business of selling insurance contracts to commercial entities such as Plaintiff in Illinois and elsewhere. Defendant is incorporated in the State of Ohio and maintains its principal place of business in Ohio.

JURISDICTION AND VENUE

25. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 because the matter in controversy exceeds \$75,000 and is between a citizen of the state of Ohio and a citizen of another state.

26. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1).

27. This Court has jurisdiction to grant declaratory relief under 28 U.S.C. § 2201 because an actual controversy exists between the parties as to their respective rights and obligations under the Policy with respect to the loss of business arising from the Closure Orders and civil authority events detailed herein.

FACTS

28. In exchange for substantial premiums, Defendant sold the commercial property insurance Policy to Plaintiff promising to indemnify the Plaintiff for losses resulting from occurrences, including the necessary suspension of business operations at any insured location caused by a government order, during the relevant time period.

29. The Policy was issued to Plaintiff at its principal place of business in Illinois and provides broad coverage for losses caused by any cause unless expressly excluded. The Policy does not exclude losses from viruses or pandemics. Thus, the Policy purchased by the Plaintiff covered losses caused by viruses, such as COVID-19.

30. Specifically, the Policy provides coverage for loss of Business Income, Extra Expense coverage, and coverage for loss due to the actions of a Civil Authority.

31. Relevant portions of the Policy provide in relevant part, subject to other Policy terms, that Defendants will:

- a. pay for the actual loss of “Business Income” and “Rental Value” you sustain due to the necessary “suspension” of your “operations” during the “period of restoration”. The “suspension” must be caused by direct “loss” to property at a “premises” caused by or resulting from any Covered Cause of Loss; and
- b. will pay Extra Expense you sustain during the “period of restoration,” and

- c. that when a Covered Cause of Loss causes damage to property other than a Covered Property at a “premises,” Defendant will pay for the actual loss of “Business Income” and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the “premises”

32. While the Policy was in force, Plaintiff sustained, and continues to sustain, a loss due to COVID-19 at, in, on, and/or around Plaintiff’s premises described in the Policy.

33. While the Policy was in force, Plaintiff sustained, and continues to sustain, a loss due to spread of COVID-19 in the community.

34. While the Policy was in force, Plaintiff sustained, and continues to sustain, a loss due to the Closure Orders issued by the Governors of the State of Illinois and State of North Carolina addressing COVID-19 and the pandemic.

35. COVID-19 is a virus.

36. COVID-19 is a physical substance.

37. COVID-19 is a human pathogen.

38. COVID-19 can be present outside the human body in viral fluid particles.

39. COVID-19 can and does live on and/or remains capable of being transmitted and active on inert physical surfaces.

40. COVID-19 can and does live on and/or remains capable of being transmitted and active on floors, walls, furniture, desks, tables, chairs, countertops, computer keyboards, touch screens, cardboard packages, furnishings, packing materials, racking, and other items of property for a period of time.

41. COVID-19 can be transmitted by way of human contact with surfaces and items of physical property located at the premises.

42. COVID-19 can be transmitted by human to human contact and interaction at premises in Illinois and North Carolina, including places like offices and warehouses.

43. COVID-19 has been transmitted by human to human contact and interaction at premises in Illinois and North Carolina.

44. COVID-19 can be transmitted through airborne viral particles emitted into the air at premises.

45. COVID-19 has been transmitted by way of human contact with airborne COVID-19 particles emitted into the air at premises in Illinois and North Carolina.

46. The presence of any COVID-19 particles renders items of physical property unsafe.

47. The presence of any COVID-19 particles on physical property impairs its value, usefulness and/or normal function.

48. The presence of any COVID-19 particles causes direct physical harm to property.

49. The presence of any COVID-19 particles causes direct physical loss to property.

50. The presence of any COVID-19 particles causes direct physical damage to property.

51. The presence of any COVID-19 particles at premises renders the premises unsafe, thereby impairing the premises' value, usefulness and/or normal function.

52. The presence of people infected with or carrying COVID-19 particles renders physical property in their vicinity unsafe and unusable, resulting in direct physical loss to that property.

53. The presence of people infected with or carrying COVID-19 particles at premises renders the premises, including property located at that premises, unsafe, resulting in direct physical loss to the premises and property.

54. In response to COVID-19 and the pandemic, the Governors of Illinois and North Carolina issued the Closure Orders pursuant to the authority vested in them respectively by the Illinois and North Carolina constitutions and the laws of the States.

55. The term “civil authority” is not defined in the Policy.

56. The State of Illinois and the State of North Carolina are each a civil authority as contemplated by the Policy.

57. The Governors of the State of Illinois and State of North Carolina are each a civil authority as contemplated by the Policy.

58. In response to COVID-19 and the pandemic, the Governors of Illinois and North Carolina issued the Closure Orders requiring, *inter alia*, that all non-essential business operations must cease.

59. Plaintiff’s business does not qualify as an essential business and Plaintiff was required to cease and/or significantly reduce operations at its locations. Through its elected officials, the State of Illinois was threatening business owners with felony criminal prosecution and imprisonment for violations of the Illinois Closure Order.

60. The Closure Orders were issued in direct response to these dangerous physical conditions, and prohibited the public and Plaintiff’s employees from accessing Plaintiff’s Illinois office and North Carolina warehouse, thereby causing suspension of Plaintiff’s business operations and triggering the Defendant’s coverage responsibilities.

61. The State of Illinois and State of North Carolina have continued to issue authoritative orders governing residents and businesses of those states, including Plaintiff, in response to COVID-19 and the pandemic, the effect of which have required and continue to require Plaintiff to cease and/or significantly reduce operations at the premises described in the Policy.

62. COVID-19 and the pandemic are physically impacting public and private property in Illinois and North Carolina, and throughout the country.

63. COVID-19 and the pandemic have caused and continue to cause direct physical loss and damage to property.

64. People in Illinois and North Carolina have been diagnosed with COVID-19.

65. People in Illinois and North Carolina have, and have had, COVID-19 disease but have not been diagnosed.

66. People in Illinois and North Carolina have COVID-19 particles on or about their person and personal property.

67. Properties and premises throughout Illinois and North Carolina contain the presence of COVID-19 particles on surfaces and items of property.

68. It is probable that COVID-19 particles have been physically present at Plaintiff's premises described in the Policy during the Policy period.

69. It is probable that COVID-19 particles have been physically present on surfaces and items of property located at Plaintiff's premises described in the Policy during the Policy period.

70. It is probable that airborne COVID-19 particles have been physically present at Plaintiff's premises described in the Policy during the Policy period.

71. It is probable that people carrying COVID-19 particles in, on or about their person have been present at Plaintiff's premises described in the Policy during the Policy period.

72. It is probable that airborne COVID-19 particles have been physically present at Plaintiff's premises described in the Policy during the Policy period.

73. Plaintiff has sustained direct physical loss and damage to items of property located at its premises and direct physical loss and damage to its premises described in the Policy as a result of the Closure Orders, and the presence of COVID-19 particles and/or the pandemic.

74. As a result of these catastrophic losses, Plaintiff has lost substantial revenue.

75. Plaintiff submitted timely insurance claims to Defendant.

76. Defendant responded by denying Plaintiff's claims as set forth in Exhibit B.

COUNT I
(Declaratory Judgment)

77. Plaintiff adopts and incorporates by reference the averments of paragraphs 1 through 76 inclusive above.

78. The Policy is an insurance contract under which Defendant 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 it to close its business.

79. Plaintiff has complied with all applicable provisions of the Policy, including payment of the premiums in exchange for coverage under the Policy.

80. Defendant has arbitrarily and without justification refused to reimburse Plaintiff for any losses incurred by Plaintiff in connection with the covered business losses related to the Closure Orders and the necessary interruption of its business stemming from COVID-19 and the pandemic.

81. An actual case or controversy exists regarding Plaintiff's rights and Defendant's obligations under the Policy to reimburse Plaintiff for the full amount of losses incurred by Plaintiff in connection with the Closure Orders and the necessary interruption of its business stemming from the Closure Orders, COVID-19, and the pandemic.

82. Pursuant to 28 U.S.C. § 2201, Plaintiff seeks a declaratory judgment from this Court declaring the following: (a) Plaintiff sustained direct physical loss or damage to property at its premises described in the Policy as a result of the Closure Orders, COVID-19 and/or the pandemic; (b) Plaintiff's losses incurred in connection with the Closure Orders and the necessary interruption of Plaintiff's business stemming from COVID-19 and the pandemic are insured losses under the Policies; (c) Defendant has waived any right it may have had to assert defenses to coverage or otherwise seek to bar or limit coverage for Plaintiff's losses by issuing a blanket coverage denial without conducting a reasonable claim investigation as required under Illinois law; and (d) Defendant is obligated to pay Plaintiff for the full amount of the losses incurred and to be incurred in connection with the covered business losses related to the Closure Orders during the necessary interruption of its business stemming from COVID-19 and the pandemic.

COUNT II
(Breach of Contract)

83. Plaintiff adopts and incorporates by reference the averments of paragraphs 1 through 82 inclusive above.

84. The Policy is an insurance contract under which Defendant was paid premiums in exchange for its promise to pay Plaintiff for its losses for claims covered by the Policy, such as business losses incurred as a result of the government orders forcing Plaintiff to close its business.

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

86. By denying coverage for any business losses incurred by Plaintiff in connection with the Closure Orders, COVID-19 and the pandemic, Defendant has breached its coverage obligations under the Policy.

87. To the extent that Defendant alleges that any dispute between the parties as to the amount of the business interruption loss is subject to the appraisal provision of the Policy, Defendant has waived such contention and provision of the Policy by its breach of the Policy and its wrongful denial of coverage.

88. As a result of Defendant's breach of the Policy, Plaintiff has sustained substantial damages for which Defendants are liable, in an amount to be proven at trial but at least in the amount of \$100,000.

COUNT III

(Statutory Penalty for Bad Faith Denial of Insurance Under 215 ILCS 5/155)

89. Plaintiff adopts and incorporates by reference the averments of paragraphs 1 through 88 inclusive above.

90. Upon receipt of the Closure Orders claims, Defendant 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 et seq.

91. Defendant's denial was vexatious and unreasonable.

92. Defendant's denial constitutes "improper claims practices" under Illinois law – namely Defendant's (1) refusal 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).

93. Therefore, pursuant to 215 ILCS 5/155, Plaintiff requests that, in addition to entering a judgment in favor of Plaintiff and against Defendant for the amount owed under the Policy at the time of judgment, the Court enter a judgment in favor of Plaintiff and against Defendant for an amount equal to the greater of: (1) sixty percent (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..

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court:

(1) Enter a declaratory judgment on Count I of the Complaint in favor of Plaintiff and against Defendant, declaring as follows:

(a) Plaintiff sustained direct physical loss or damage to property at its premises described in the Policy as a result of the Closure Orders, COVID-19 and/or the pandemic; and

(b) Plaintiff's losses incurred in connection with the Closure Orders and the necessary interruption of its business stemming from COVID-19 and the pandemic are insured losses under the Policy; and

(c) Defendant has waived any right it may have had to assert defense to coverage or otherwise seek to bar or limit coverage for Plaintiff's losses by issuing a blanket coverage denial without conducting a claim investigation as required under Illinois law; and

(d) Defendant is obligated to pay Plaintiff for the full amount of the losses incurred and to be incurred in connection with the covered business losses related to the Closure Orders during the shelter in place period and the necessary interruption of Plaintiff's business stemming from COVID-19 and the pandemic.

(2) Enter a judgment on Count II of the Complaint in favor of Plaintiff and against Defendant and award damages for breach of contract in an amount to be proven at trial;

(3) Enter a judgment on Count III of the Complaint in favor of Plaintiff and against Defendant in the amount equal to the greater of (1) sixty percent (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;

(4) Enter a judgment in favor of Plaintiff and against Defendant in an amount equal to all attorneys' fees and related costs incurred for the prosecution of this coverage action against Defendant, pursuant to 215 ILCS 5/155, which amount to be established at the conclusion of this action; and

(5) Award Plaintiff prejudgment interest, to be calculated according to law, to compensate Plaintiff for the loss of use of funds caused by Defendant's wrongful refusal to pay Plaintiff the full amount in costs incurred in connection with the Closure Orders claims, and such other relief as the Court deems equitable.

Respectfully submitted,

/s/ Scott D. Simpkins

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JURY DEMAND

Plaintiff hereby requests a trial by jury on all issues so triable pursuant to Fed. R. Civ. P.

38(b).

/s/ Scott D. Simpkins

Scott D. Simpkins (0066775)