

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS EQUITY, L.L.C.	*	CIVIL ACTION 20-1935
D/B/A GALATOIRE'S RESTAURANT	*	
AND GALATOIRE'S 33 BAR & STEAK	*	CASE NUMBER
VERSUS	*	
U.S. SPECIALTY INSURANCE COMPANY	*	DIVISION
* * * * *		

COMPLAINT

NOW INTO COURT, through undersigned counsel, comes New Orleans Equity, LLC, to file this complaint for declaratory judgment, damages, and other equitable relief. This case arises out of a contract of insurance between Plaintiff and Defendant and concerns damages owed to Plaintiff in connection with Defendant's breach of the insurance contract.

PARTIES

1. Plaintiff New Orleans Equity, L.L.C. is a limited liability company organized under the laws of the State of Louisiana and consisting of the following members:
 - a. Royal Equity L.L.C., a limited liability company organized under the laws of the State of Louisiana with its sole member being Todd Trosclair, a natural person of the age of majority who is a domiciliary of the state of Louisiana.
 - b. Royal Equity II L.L.C., a limited liability company organized under the laws of the State of Louisiana with its members consisting of:
 - i. John Georges, a natural person of the age of majority who is a domiciliary of the state of Louisiana,

- ii. William Kearney, a natural person of the age of majority who is a domiciliary of the state of Louisiana,
 - iii. Melvin Rodrigue, a natural person of the age of majority who is a domiciliary of the state of Louisiana,
 - iv. Donald Bollinger, a natural person of the age of majority who is a domiciliary of the state of Louisiana, and
 - v. John Simpson, a natural person of the age of majority who is a domiciliary of the state of Louisiana.
- c. Fourth Generation Investments, L.L.C., a limited liability company organized under the laws of the State of Louisiana with its sole member being Duane Galatoire Attaway, a natural person of the age of majority who is a domiciliary of the state of Louisiana.
- d. Michelle Galatoire, L.L.C., a limited liability company organized under the laws of the State of Louisiana with its sole member being Michelle Galatoire, a natural person of the age of majority who is a domiciliary of the state of Louisiana.
- e. Leon Galatoire Investments, L.L.C., a limited liability company organized under the laws of the State of Louisiana with its sole member being Leon Galatoire, a natural person of the age of majority who is a domiciliary of the state of Louisiana.
- f. Ashley Attaway, L.L.C., a limited liability company organized under the laws of the State of Louisiana with its sole member being Ashley Attaway, a natural person of the age of majority who is a domiciliary of the state of Louisiana.

2. Plaintiff owns and operates two restaurants located next to each other on the 200 block of Bourbon Street in New Orleans, LA: Galatoire's Restaurant ("Galatoire's") and Galatoire's 33 Bar & Steak ("33").
3. Defendant U.S. Specialty Insurance Company (hereinafter "USSIC") is a foreign insurance company domiciled in Texas and organized under the laws of Texas, with its principal place of business listed with the Louisiana Department of Insurance as 13403 Northwest Freeway, Houston, TX 77040, and whose Louisiana registered agent for service of process is the Louisiana Secretary of State, 8585 Archives Ave., Baton Rouge, LA 70809.

JURISDICTION

4. This Honorable Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because Plaintiff is considered to be a citizen of the state of Louisiana, Defendant is considered to be a citizen of the state of Texas, and the amount in controversy exceeds \$75,000.
5. This Court has personal jurisdiction over Defendant because at all relevant times it has engaged in substantial business activity in Louisiana including soliciting, transacting, and conducting business in Louisiana through its employees, agents, and representatives and it has derived substantial revenue from such business in Louisiana.

VENUE

6. Venue in this case is proper in this Court pursuant to 28 U.S.C. § 1391, because the events or omissions that are the subject of this action occurred in Orleans Parish, Louisiana, which is completely and entirely within the United States District Court

for the Eastern District of Louisiana. In addition, this case involves a contract of insurance that pertains to a property that is situated entirely within the United States District Court for the Eastern District of Louisiana.

FACTS

Defendant's Insurance Policy

7. USSIC issued a policy of insurance entitled Restaurant Recovery Insurance to Plaintiff identified as policy U719-860418 ("the policy" or "Plaintiff's policy") that provided coverage at all relevant times regarding the two restaurants owned by Plaintiff.
8. Plaintiff did not participate in the drafting or negotiating of the policy.
9. In marketing materials regarding the policy, Defendant stated the following:

What the Policy Covers

The policy provides business interruption coverage to a restaurant location in the event of an incident. This coverage encompasses loss of profits as well as reimbursement of associated expenses such as incident expenses, brand rehabilitation costs, recall costs, extortion monies and crisis management. Adverse publicity in connection with an accidental contamination or adverse publicity that is found to be baseless is also covered. The expenses associated with that incident can be reimbursed for up to 18 months; this coverage is available to restaurants of any size domiciled in the U.S. and Canada.

10. Some of the “Highlights” of the policy marketed by Defendant included:

- 24-hour crisis hotline
- No minimum percentage threshold for the reduction in revenue for coverage to trigger
- Submissions can be responded to same day of receipt at Specialty Group

11. In a “Frequently Asked Questions” section of marketing materials regarding the policy, Defendant represented the following

Which events trigger coverage?

- Accidental contamination
- Malicious tampering
- Product extortion
- Adverse publicity and baseless adverse publicity

12. The marketing materials for the policy indicated that the policy provided “crisis response assistance” to Plaintiff in addition to reimbursement:

Once a triggering event is discovered, what coverages apply?

The policy provides a package of protection that goes beyond reimbursement of the Insured for expenses and lost revenue in the wake of a covered event. As part of the coverage the policy affords, specialized services are made available to the Insured for the purpose of crisis response assistance, as well as loss assessment and mitigation. These services are provided by uniquely experienced and qualified professionals from a wide range of disciplines.

13. The marketing materials of Defendant indicated that Defendant would perform “chemical analysis, forensics and/or physical examination in order to ascertain whether a loss has occurred...Specialized consultants are available 24 hours a day, seven days a week to the Insured”:

FINANCIAL LOSS INCLUDES:	
Pre-incident expenses	Consultant fees and expenses plus chemical analysis, forensics and/or physical examination in order to ascertain whether a loss has occurred. The policy’s self-insured retention does not apply to these costs. Specialized consultants are available 24 hours a day, seven days a week to the Insured.
Business interruption	Loss of gross revenue and extra expenses for up to 18 months following an incident. (No minimum percentage threshold for the reduction in revenue in order for the business interruption coverage to trigger).
Rehabilitation expense	Reasonable and necessary expenses for a period of up to 12 months to reestablish the Insured’s products to the reasonably projected level of sales or market share anticipated prior to the incident.

Consultant and advisor costs	Fees and costs of consultants to assist the Insured during an incident as per crisis management below.
Crisis management	<p>The Specialty Group product comes with a 24-hour crisis hotline which gives access to independently owned and operated consultants available to assist their clients in handling the various exposures. Each exposure has unique characteristics and, therefore, demands its own specialist consultant from these leading U.S. based providers available on a priority basis at all times. Each Specialty Group policyholder will have access to the following specialized assistance:¹</p> <p>-The Acheson Group, LLC (TAG) responds on food borne illness and contamination issues, and acts as a provider of consulting services in the areas of food safety, training, quality assurance, outbreak alerts and crisis simulation.</p>

14. The insuring language of the policy provides coverage in favor of Plaintiff as follows:

1. INSURED EVENTS

The Insurer will reimburse the Insured for its loss in excess of the Deductible, but not exceeding the limits or sub-limits of liability stated in the Declarations, caused by or resulting from any of the following Insured Events first discovered during the Policy Period and reported to the Insurer in accordance with 6.20 Notice of an Incident during the Policy Period or up to forty eight (48) hours after expiration of the Policy Period, provided that as of inception of this insurance the Insured was not aware and could not reasonably have been aware of circumstances which could lead to a potential claim or loss under this Policy of insurance.

1.1 ACCIDENTAL CONTAMINATION

Any accidental or unintentional contamination, impairment or mislabeling of an Insured Product(s), which occurs during or as a result of its production, preparation, manufacture, packaging or distribution – provided that the use or consumption of such Insured Product(s) has resulted in or would result in clear, identifiable, internal or external visible physical symptoms of bodily injury, sickness, disease or death of any person(s), within three hundred and sixty five (365) days following such consumption or use.

15. The policy defines INSURED PRODUCT(S) as follows:

INSURED PRODUCT(S) means all ingestible products for human consumption, or any of their ingredients or components, that have been reported to the *Insurer* on the application on the with the

Insurer for the effective dates of this Policy or addendum to such application and that are:

- a. in production ; or
 - b. have been manufactured, handled or distributed by the *Insured*;
or
 - c. manufactured by any contract manufacturer for the *Insured*; or
 - d. being prepared for or are available for sale; or
 - e. all ingestible products for human consumption served at any restaurant location operating under the same trade name as the *Insured*.
16. The policy obligates Defendant to reimburse Plaintiff for certain costs and losses including loss of gross revenue and extra expenses associated with business interruption caused by an Accidental Contamination of an Insured Product.
17. The policy also obligates Defendant to pay for consultants and advisors hired to assist Plaintiff with responding to an insured event under the policy if Defendant consents to use of the consultants and advisors.
18. Defendant clearly contemplated that losses caused by a virus could be covered under the policy because the policy explicitly excludes coverage for any loss caused directly or indirectly by any form of avian influenza viruses.
19. Defendant clearly believes that losses caused by COVID-19 or SAR-CoV-2 are covered under the policy because Defendant authored an endorsement (the “coronavirus endorsement”) that applies to policies identical to Plaintiff’s policy, except issued after April 2, 2020, that specifically excludes damages caused by COVID-19 or SAR-CoV-2.
20. The coronavirus endorsement states as follows

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE
READ IT CAREFULLY

MANUSCRIPT ENDORSEMENT

SEVERE ACUTE RESPIRATORY SYNDROME
CORONAVIRUS 2 (SARS-CoV-2) EXCLUSIONARY
ENDORSEMENT

It is further agreed that Section 4. Exclusions is amended to include the following:

- 4.21 Any claim in any way caused by, arising out of, or resulting from:
- a) Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2);
 - b) Coronavirus Disease 2019 (COVID-19);
 - c) any mutation or variation of a) or b) above;
 - d) any fear or threat, whether actual or perceived, of a), b), or c) above; and/or
 - e) any action taken in controlling, preventing, suppressing or in any way relating to any outbreak of a), b), or c) above.

21. Plaintiff's policy does not contain the coronavirus endorsement.

Plaintiff's Business

22. Galatoire's is a New Orleans institution where guests have dined for 115 years.
23. 33 began operating in April of 2013.
24. Galatoire's and 33 are physically connected through a portal and employees of both restaurants freely travel between both restaurants without ever going outside.
25. As a result of the configuration of Galatoire's and 33, air flows from the kitchen of one restaurant directly to the kitchen of the other restaurant.

26. In addition to excellent food, guests who dine at Plaintiff's restaurants often do so because of the very social nature of the restaurants and the unique relationship between guests and the wait staff.
27. Plaintiff purchases ingredients from suppliers and uses those ingredients to create its own menu items.
28. Plaintiff serves food, drinks, condiments, and ingestible garnishes to its guests using its own plates, silverware, glassware, saltshakers, and other receptacles to distribute and package the food, drinks, condiments, and ingestible garnishes.
29. Guests at Plaintiff's restaurants frequently share appetizers and frequently drink water poured out of shared carafes.

Nature and Spread of Sars-CoV-2 and COVID-19

30. COVID-19 is a disease caused by the novel coronavirus SARS-CoV-2.
31. SARS-CoV-2 is a highly transmissible virus and, consequently, COVID-19 is a highly contagious disease.
32. SARS-CoV-2 and/or COVID-19 are transmitted by multiple means including an infected person contaminating an object by breathing or touching the object which results in persons who then subsequently come into direct or indirect contact with the contaminated object being exposed to SARS-CoV-2 and/or COVID-19.
33. SARS-CoV-2 and/or COVID-19 can survive on the surface of contaminated objects for hours to days depending on the surface.
34. A study published in *Nature Medicine* on April 15, 2020, concluded that people exposed to SARS-CoV-2 may begin shedding (releasing) the virus in high levels

into the air and onto objects beginning several days before the appearance of first symptoms.¹

35. During all of March of 2020, the United States Centers for Disease Control and Prevention (“the CDC”) advised the general public that wearing a face covering was not necessary except for people exhibiting signs of sickness.
36. Since March of 2020, the CDC has advised that all persons should wear face coverings because even asymptomatic people who have been in contact with SARS-CoV-2 and/or COVID-19 can contaminate air and objects, and subsequently other people, with SARS-CoV-2 and COVID-19.

Accidental Contamination of Plaintiff’s Insured Products

37. An employee of Plaintiff, who will hereafter be referred to as “employee X”, is a waiter who has worked at Galatoire’s for more than 50 years.
38. Employee X worked many shifts at Galatoire’s in the weeks leading up to March 17, 2020, including the weekend of March 13 to 15, 2020.
39. Employee X is one of the most popular members of the Galatoire’s wait staff and his services were requested by many guests of Galatoire’s in the weeks leading up to March 17, 2020, which resulted in Employee X travelling extensively in all parts of Galatoire’s and parts of 33 in the weeks leading up to March 17, 2020.
40. Employee X did not wear a mask at any time while working at Galatoire’s as he was not aware that he had any known symptoms of COVID-19 in the weeks leading up to March 17, 2020.

¹ He, X., Lau, E.H.Y., Wu, P. *et al.* Temporal dynamics in viral shedding and transmissibility of COVID-19. *Nat Med* **26**, 672–675 (2020). <https://doi.org/10.1038/s41591-020-0869-5>.

41. Employee X reported to Plaintiff on Tuesday, March 17, 2020, that he was experiencing symptoms of COVID-19.
42. Shortly thereafter, Employee X was medically diagnosed with COVID-19.
43. “Accidental Contamination” – defined in the policy as “accidental or unintentional contamination [or] impairment...of an Insured Product(s)... during or as a result of its production, preparation, manufacture, packaging or distribution” – can happen in a large variety of activities that occur in Plaintiff’s business including preparing food, preparing drinks, plating food, pouring drinks, and transporting and/or serving food, drinks, condiments, and ingestible garnishes.
44. Unfortunately, and unknown to anyone, Employee X was extensively shedding SARS-CoV-2 and/or COVID-19 in the weeks leading up to March 17, 2020, including the weekend of March 13 to 15, and accidentally and extensively contaminated food, drinks, condiments, ingestible garnishes, food preparation stations, plates, silverware, glasses, cups, saltshakers, and other receptacles at Galatoire’s and 33 with SARS-CoV-2 and/or COVID-19.
45. Consequently, guests who dined Galatoire’s and 33 in the weeks leading up to March 17, 2020, including on the weekend of March 13 to 15, 2020, were served Insured Products that were contaminated during or as a result of the production, preparation, manufacture, packaging, or distribution of the Insured Products.
46. Specifically, some guests were served Insured Products that were contaminated when Employee X directly shed SARS-CoV-2 and /or COVID-19 onto the Insured Product.

47. In addition, some guests were served Insured Products that were contaminated or impaired as a result of the preparation, packaging, or distribution of the Insured Products because the food preparation stations, plates, silverware, glasses, cups, saltshakers, and other receptacles on and in which the Insured Products were directly prepared, packaged, or distributed were previously contaminated by Employee X shedding SARS-CoV-2 and/or COVID-19 onto them which then resulted in the contamination or impairment of the Insured Product.
48. Multiple guests who dined at Galatoire's the weekend of March 13 to 15, 2020, who were exposed SARS-CoV-2 and/or COVID-19 while dining at Galatoire's were subsequently diagnosed with COVID-19 shortly thereafter.

Submission of a Claim under the Policy and Denial by Defendant

49. The Accidental Contamination of Insured Products with SARS-CoV-2 and/or COVID-19 was an Insured Event that resulted in covered losses borne by Plaintiff.
50. Plaintiff provided Defendant with a notice of a loss on April 1, 2020, once Plaintiff was aware of an Accidental Contamination of Insured Products.
51. The Accidental Contamination of Insured Products with SARS-CoV-2 and/or COVID-19 created a crisis for Plaintiff.
52. During a phone call in early April of 2020, Plaintiff requested that Defendant provide crisis response advice and guidance that Defendant was obligated to provide under the terms of the policy.
53. At the time of the phone call, Plaintiff was continuing to operate Galatoire's in connection with offering "take-out" services to attempt to mitigate losses that were caused by an Insured Event under the policy.

54. During the phone call, Plaintiff offered to close Galatoire's and suspend offering "take-out" services so that Defendant could test and clean the restaurant.
55. During the phone call, Plaintiff sought the expertise of Defendant and inquired whether Plaintiff should use a professional cleaning and decontamination service and, if so, the frequency Plaintiff should clean and decontaminate Galatoire's.
56. Despite Defendant's obligation under the policy to pay for consultants and advisors to assist Plaintiff in responding to an Insured Event and the requirement that Defendant approve the retention of consultant and advisors before retention by Plaintiff, Defendant never responded to Plaintiff's request for crisis assistance.
57. On April 20, 2020, Plaintiff provided evidence of loss of gross revenue recoverable under the policy in excess of \$884,000 and evidence estimating an additional loss of gross revenue totaling over an additional \$1,000,000.
58. Plaintiff has suffered and will continue to suffer damages in the future in excess of the amounts insured by the Policy as a result of an Insured Event under the policy.
59. On April 30, 2020, Plaintiff provided Defendant a link to an article that was published on nola.com regarding Employee X's employment at Galatoire's Restaurant and Employee X's diagnosis of COVID-19.
60. On April 30, 2020, Plaintiff provided Defendant a link to an article published on nola.com about a guest who was diagnosed with COVID-19 after dining at Galatoire's.

CAUSES OF ACTION

Declaratory Judgment

61. 28 U.S.C. § 2201(a) 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.”
62. Plaintiff prays for a declaration as follows:
 - a. The policy provides coverage for damages arising from accident contamination of Insured Products by COVID-19 or SARS-CoV-2.
 - b. Plaintiff’s loss is covered under the policy.

Breach of Contract

63. Plaintiff met its obligation under the policy by informing Defendant of a loss covered under the policy, submitting proof of Accidental Contamination of an Insured Product, and submitting proof of damages for which Defendant is obligated to reimburse Plaintiff.
64. Plaintiff also requested crisis guidance and assistance covered by the policy.
65. Defendant breached the terms of the policy by failing to pay amounts owed to Plaintiff for covered losses under the policy and by failing to provide requested guidance and assistance to Plaintiff regarding retention of advisors or consultants.
66. Plaintiff is contractually owed amounts under the policy from Defendant.

Defendant’s Breach of Duty owed under Louisiana Revised Statute 22: 1973

67. La. R.S. 22:1973 (A) imposed a duty on Defendant to adjust Plaintiff’s claim fairly and promptly and to make a reasonable effort to settle Plaintiff’s claim.
68. Defendant breached its duty owed under La. R.S. 22:1973 (A) because it failed to pay the amount due Plaintiff within sixty days of April 20, 2020, after receipt of

satisfactory proof of loss from Plaintiff and because Defendant's failure to pay the claim was arbitrary, capricious, and without probable cause.

69. Plaintiff suffered damages as a result of Defendant's breach of duties owed by under La. R.S. 22:1973.
70. Based on Defendant's violation of the duty owed to Plaintiff under La. R.S. 22:1973, Defendant is liable to Plaintiff for penalties up to two times the contractually-insured damages sustained by Plaintiff or five thousand dollars, whichever is greater, for Defendant's breach of its duty of good faith and fair dealing.

Defendant's Breach of Duty owed under Louisiana Revised Statute 22:1892

71. La. R.S. 1892(A)(1) imposed a duty on Defendant to pay Plaintiff the amount of any claim due to Plaintiff within thirty days after receipt of satisfactory proof of loss from Plaintiff.
72. Defendant's failure to pay the amount owed to Plaintiff pursuant the policy within thirty days of Defendant's receipt of satisfactory proof of loss was arbitrary, capricious, and/or without probable cause.
73. Consequently, Defendant breached duties owed under La. R.S. 22:1892.
74. Plaintiff suffered damages as a result of Defendant's breach of duties owed under La. R.S. 1892.
75. Pursuant to La. R.S. 22:1892(B), Defendant is liable to Plaintiff, in addition to the amount Defendant owed Plaintiff for contractually-insured damages sustained by Plaintiff covered under the policy, for fifty percent of amounts owed under the policy as well as reasonable attorney's fees and costs.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against Defendant as follow:

- a. issuing a Declaratory Judgment declaring the Parties' rights and obligations under the policy;
- b. awarding amounts owed to Plaintiff under the policy;
- c. awarding all penalties and damages allowed by any governing statutes or other governing law including but not limited to La. R.S .22:1973 and La. R.S. 22:1892;
- d. awarding statutory pre-judgment and post-judgment interest on any amounts awarded;
- e. awarding costs and expenses in this litigation, including, but not limited to, expert fees, filing fees, and reasonable attorneys' fees; and
- f. such other relief as this Court deems just and proper.

Respectfully Submitted:

/s/William A. Barousse

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