

IN THE CIRCUIT COURT OF THE 6TH  
JUDICIAL CIRCUIT IN AND FOR  
PINELLAS COUNTY, FLORIDA

CASE NO.

ODH INTERNATIONAL, INC.,  
d/b/a MADFISH, a Florida corporation,

Plaintiff,

v.

SCOTTSDALE INSURANCE COMPANY,  
an Arizona corporation,

Defendant.

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**COMPLAINT**

Plaintiff ODH International, Inc. sues Defendant Scottsdale Insurance Company (“Scottsdale”) and states:

**JURISDICTION, PARTIES AND VENUE**

1. This is a civil action for breach of an insurance contract, costs, and attorneys’ fees in excess of Thirty Thousand Dollars (\$30,000.00).

2. Plaintiff ODH International, Inc., d/b/a Madfish, is a Florida corporation and the operator of a restaurant located in Pinellas County, Florida.

3. Defendant Scottsdale is an Arizona corporation authorized to conduct business in Florida.

4. Venue lies in Pinellas County, Florida pursuant to Fla. Stat. § 47.051 because Scottsdale has agents in Pinellas County, this is where the cause of action accrued, this is where the insurance contract was issued, and where the named insured is located. *See also* Fla. Stat. § 47.011; Fla. Stat. § 47.041.

5. This Court has personal jurisdiction over Defendant pursuant to Fla. Stat. § 48.193(1)(a) because Plaintiff's claim arises out of Defendant conducting, engaging in and carrying on business in Florida; Defendant breaching an insurance contract in Florida by failing to perform contractual obligations that the contract requires to be performed in Florida; and Defendant contracting to insure Plaintiff's insureds' premises and other properties, which are located in Florida. Furthermore, the Plaintiff is a Florida corporation located in Florida.

6. All conditions precedent to this action have occurred, have been performed or have been waived.

## FACTS

### **A. Background**

7. People and businesses buy insurance to help themselves when disaster occurs.

8. People and businesses know that they are at their most vulnerable and desperate condition in the wake of disasters like the current pandemic. Insurance companies know it too.

9. Unlike most other types of commercial contracts, the insurance contract contains mutual obligations.

10. The insurance company, including Defendant herein, promises that it will provide money when most needed after a covered loss in the event of a disaster.

11. The insurance company, including Defendant herein, promises, warrants and sells "peace of mind" that in the unlikely event of a catastrophe or disaster, such as a pandemic, the policy holder will be fully and promptly indemnified.

12. For years and even decades, the vast majority of people and businesses that carry business interruption insurance have faithfully paid their premiums and have never had a claim. Now that there is a catastrophic business interruption caused by a national health pandemic and

government-ordered business shutdowns, their claims are denied. Like Plaintiff, many people and businesses are relying on their business interruption insurance to cover what it is supposed to cover – loss of income and ongoing expenses – to get through this crisis and rebuild their businesses.

13. Plaintiff, like any business, is about commerce that involves hiring employees, contracting with suppliers and selling to customers. The business counts on current income and future income from operations to remain operational, and insurance coverage when operations are suspended due to disasters.

14. Policyholders are dependent on performance by the insurance company when they are most vulnerable. Dependence here arises from the policyholders' financial desperation combined with a state of mind focused on managing the fallout from the disaster.

15. When the insurance company fails to fulfill its obligations timely and completely, the policyholder suffers contractual damages and harm to the existence of its business.

16. In order to protect its business and its income from losses, Plaintiff obtained an insurance policy (the "Policy") from Scottsdale.

17. Plaintiff purchased this commercial property insurance policy, with policy number CPS3306359, effective February 1, 2020. *See* Exhibit A. The Policy protects against, among other risks, business losses and extra expenses that result from an involuntary interruption of business operations.

18. The Policy period runs until February 1, 2021, and insures Plaintiff's commercial property, the restaurant at which Plaintiff conducts its business operations. The Policy is in full effect as Plaintiff has faithfully paid the premiums due which Defendant accepted.

19. The Policy is a contract whereby Plaintiff agreed to pay monthly premiums in exchange for Defendant's promises of coverage for business income losses, including coverage for losses due to the involuntary suspension of business operations.

20. Beginning in March 2020, Plaintiff was forced to suspend full business operations at the covered restaurant as a result of the national healthcare crisis and national emergency proclaimed to deal with the strain placed on the nation's healthcare system from the COVID-19 pandemic and resultant civil authority orders, which prohibited Plaintiff from serving guests at its restaurant in order to prevent the restaurant guests from becoming endangered by contact with other people. This ongoing suspension has caused Plaintiff to suffer significant business income losses and to incur significant expenses.

21. Specifically, Defendant is in breach by refusing coverage for the suspension of business that resulted from the national COVID-19 pandemic disaster. Defendant is obligated under the Policy to cover and pay these losses and expenses but has refused to do so.

#### **B. Relevant Policy Provisions**

22. The Policy is an all-risk commercial property insurance policy that provides coverage for physical loss of the insured property from all risks unless expressly excluded by language in the body of the Policy or through a separate exclusion endorsement. There is no exclusion in the Policy for business interruption caused by a natural disaster and the declaration of a national emergency and urgent lock down of non-essential businesses and at-home quarantine of the vast majority of the national population due to a global pandemic and need to lessen the strain on the nation's healthcare system by restricting access to places where the population can be exposed to this physically dangerous condition.

23. The Policy defines Plaintiff's covered property as "Business Income" for which it will pay for the loss caused by or resulting from any "Covered Cause of Loss."

24. The Business Income coverage provides that Defendant will pay for the actual loss of business income Plaintiff sustains due to the necessary suspension of its operations during a period of restoration which ends when business operations return to normal.

25. The Policy defines operations as Plaintiff's "business activities occurring at the described premises."

26. The Policy defines business income as "Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no physical loss had occurred...."

27. The Policy also provides for coverage for "Extended Business Income" where the necessary suspension of operations produces a business income loss up to the time normal business operations resume.

28. The Policy includes coverage for Extra Expense, providing that Defendant will pay the necessary expenses Plaintiff incurs that it would not have incurred if there had been no loss of the property.

29. The Policy includes coverage for actions of Civil Authority, providing Defendant will pay for the actual loss of Business Income and incurred Extra Expenses at the premises caused by the action of civil authority that prohibits access to the premises in response to dangerous physical conditions.

### **C. Plaintiff Has Suffered and Continues to Suffer a Loss Under the Policy**

30. On March 9, 2020 Governor Ron DeSantis issued Executive Order 20-52 concerning the public health emergency posed by the COVID-19 pandemic, citing his authority to declare a state of emergency under Chapter 267 (1)(a), Florida Statutes which is intended to

provide emergency measures to protect residents from disasters that threaten life, health and safety and damage to property.

31. From March through May 2020, Governor DeSantis entered dozens of additional Executive Orders suspending or curtailing business operations in Florida.<sup>1</sup>

32. On March 13, 2020, following the Governor's orders, the Pinellas County Board of County Commissioners adopted Resolution No. 20-16, declaring a local state of emergency to "provide for the protection of the public health, safety, and welfare, and preserve the lives and property of the people of Pinellas County."

33. Barry Burton, Pinellas County Administrator, following the Governor's Executive Orders and the Board of Commissioners' resolutions, issued a series of additional resolutions from March through May 2020 that closed non-essential businesses and placed severe restrictions on food establishments, including Plaintiff's restaurant.<sup>2</sup>

34. On March 13, 2020, President Donald Trump declared a national state of emergency over the COVID-19 pandemic, effective March 1, 2020, wherein he directed that "hospitals and medical facilities throughout the country assess their preparedness posture and be prepared to surge capacity and capability."

35. Other similar state and local civil authority orders have issued that close or restrict access to all non-essential business operations or prohibit public access to the property of non-essential businesses where the individuals gather in close proximity to each other in order to protect the public from the dangerous condition of contracting the respiratory illness named COVID-19.

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<sup>1</sup> <https://www.flgov.com/2020-executive-orders/>

<sup>2</sup> <https://www.pinellascounty.org/emergency/declarations.htm>

36. The civil authority orders expressly state that the closing of non-essential businesses, reductions in permitted operating hours, and social distancing restrictions placed on the public are necessary emergency measures to protect the health and safety of all residents in Florida due to the spread of COVID-19 through human-to-human and surface-to-human contact with the coronavirus.

37. The COVID-19 pandemic is a “natural disaster.” Like other specific disasters, such as hurricanes or earthquakes, it involves substantial damage to property, hardship, suffering, and loss of life.

38. Unsurprisingly, already, at least one State Supreme Court has recognized, in *Friends of DeVito v. Wolf*, that the damage caused by the COVID-19 pandemic is indistinguishable from those caused by earthquakes, fires and the other casualty events:

We agree with Respondents that the COVID-19 pandemic qualifies as a “natural disaster” under the Emergency Code...

2020 Pa. LEXIS 1987, at \*31 (Pa. April 13, 2020).

39. Losses from disasters are what property-based insurance coverage has always been intended to cover.

40. The nature of Plaintiff’s business is a restaurant open to the public and a place where individuals socialize and gather in close proximity. The intended purpose of the restaurant is to provide a safe environment for its guests to use and enjoy.

41. As a direct result of the existence of the national COVID-19 emergency, and orders to close non-essential businesses in Florida and throughout the country, Plaintiff’s restaurant became unsafe for the public to use. Thus, Plaintiff lost the physical use of the insured restaurant, resulting in a significant physical loss of its business income and incurred extra expenses. The loss continues.

42. Further, the civil authority actions restricting the public from accessing Plaintiff's premises and the area surrounding it resulted from unsafe and dangerous physical conditions present at the restaurant which caused a suspension of Plaintiff's business operations and loss of business income. There are over 1,000 reported cases of COVID-19 that have been reported in Pinellas County. This shows that the population is vulnerable to contracting COVID-19 throughout the county, and that dangerous conditions permeate all property, including the areas surrounding Plaintiff's premises.

43. Specifically, the civil authority orders have denied access to the premises, prevented customers from physically occupying the premises, caused the premises to be physically uninhabitable by customers, caused its intended purpose and function to be nearly eliminated or destroyed, and caused the suspension of the majority of business operations.

**D. Plaintiff Has Suffered and Continues to Suffer a Loss Under the Policy, But Was Denied Coverage**

44. The business income losses Plaintiff has and continues to suffer, and the extra expenses Plaintiff has incurred are covered under the Policy, yet on April 24, 2020 Defendant denied coverage despite Plaintiff's timely notice of its claim.

45. Due to the proclaimed national disaster, state and local state of emergency declarations, and related civil authority orders intended to keep the public safe, Plaintiff has suffered business income losses from the reduction and suspension of business operations, and has incurred extra expenses.

46. These losses and expenses have continued through the date of filing of this action as the restaurant operations remain suspended or severely restricted.

47. Plaintiff's lost business income and extra expenses due to a national health and safety disaster are covered under the Policy, are not limited and have not been excluded from



coverage. Plaintiff is entitled to be indemnified by Defendant for its business income losses and expenses incurred.

48. Thus, Defendant is in breach of the Policy for denying coverage.

## **COUNT I**

### **BREACH OF CONTRACT**

49. Plaintiff incorporates by reference paragraphs 1 – 48 as though fully set forth herein.

50. Plaintiff has a commercial property insurance policy issued by Defendant.

51. Plaintiff has performed all its obligations as specified by the Policy including the payment of all premiums due.

52. Plaintiff's Policy provides coverage for business income loss, extended business income loss, and extra expense for unexpected and unexcluded covered causes of loss.

53. As stated above, Plaintiff had to involuntarily close its insured premises to the public and cease or substantially reduce its operations due to the national healthcare disaster and COVID-19 emergency and resulting measures put in place by civil authority orders and thus has incurred substantial business income losses and extra expenses.

54. Defendant denied and refused to provide coverage for Plaintiff's business income losses and extra expenses.

55. As a result of the Defendant's breach of the Policy, Plaintiff has suffered actual damages.

**WHEREFORE**, Plaintiff seeks compensatory damages resulting from Defendant's breach of contract, an appraisal to determine the amount of Plaintiff's damages, and further seeks all relief deemed appropriate by this Court, including attorneys' fees and costs.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demands judgment against the Defendant as follows:

- (1) Awarding Plaintiff compensatory damages from the Defendant's breach of the insurance contract in an amount to be determined at trial or appraisal ordered by this Court, together with appropriate prejudgment interest at the maximum rate allowable by law;
- (2) Awarding Plaintiff costs and disbursements and reasonable allowances for the fees of Plaintiff's experts, and reimbursement of expenses;
- (3) Awarding Plaintiff attorneys' fees pursuant to Fla. Stat. § 627.428; and
- (4) Awarding such other and further relief the Court deems just, proper, and equitable.

**DEMAND FOR A JURY TRIAL**

Plaintiff requests a jury trial for any and all Counts for which a trial by jury is permitted by law.

Respectfully submitted June 19, 2020.

/s/ Javier A. Lopez

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