

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

ONE LIFE JEWELRY, INC.
d/b/a A SIMPLE PEACE

a Domestic Corporation,
Plaintiff,

vs

Case No. _____

OHIO SECURITY INSURANCE COMPANY

a Foreign Corporation,
Defendant,

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW, the Plaintiff, ONE LIFE JEWELRY, INC. d/b/a A SIMPLE PEACE, by and through it's undersigned Attorney, and files this it's complaint against the Defendant, OHIO SECURITY INSURANCE COMPANY, 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, ONE LIFE JEWELRY, INC. d/b/a A SIMPLE PEACE, 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 selling jewelry with a store located in Tarpon Springs, Florida.
3. Defendant, OHIO SECURITY INSURANCE COMPANY, is and at all times material to the allegations in this Complaint was a Corporation organized and existing

under the laws of the State of Massachusetts, having its principal place of business in Boston, Massachusetts who was authorized and licensed to do business in the State of Florida as an insurer and who had an agent in Hillsborough County, Florida making venue proper in Hillsborough County, Florida pursuant to Florida Statute Section 47.051.

COMMON ALLEGATIONS

4. At all times material to this action, there was in existence, a policy of insurance issued by Defendant to Plaintiff, providing coverage to Plaintiff's two buildings located at 836 Dodecanese Blvd, Tarpon Springs, Florida 34689-3134 and 1810 S. Pinellas Avenue, Suite K, Tarpon Springs, Florida 34689-1954. 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.

5. 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 30 06 07 which provides in pertinent part as follows:

. . .

5. Additional Coverages

a. Civil Authority.

In this Additional Coverage – Civil Authority, the described premises are premises to which this Coverage Form applies, as shown 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 and necessary Extra

Expense 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 continuation 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 for Business Income 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.

Civil authority coverage for necessary Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

(1) Four consecutive weeks after the date of that action; or

(2) When your Civil Authority coverage for Business Income ends: Whichever is later.

6. This coverage was modified by endorsement which provides as follows:

G. 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 four-week period is replaced by a three-week period.

3. Civil Authority coverage is subject to all other provisions of that Additional Coverage.

7. 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.

8. Plaintiff alleges that Susan’s Flags & More, Inc. was likewise shut down due to the attached order which is located at 826 Dodecanese Blvd, Tarpon Springs, Florida which is less than 1 mile of the insured location listed in the policy as 836 Dodecanese Blvd.

9. Plaintiff alleges that Britton’s Archery Supplies-Range, Inc. was likewise shut down due to the attached order which is located at 1743 Pinellas Avenue, Tarpon Springs, Florida 34689 which is less than 1 mile of the insured location listed in the policy as 1810 S. Pinellas Avenue, Suite K, Tarpon Springs, Florida 34689-1954

10. 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

11. Plaintiff re-alleges and incorporates allegations one (1) through ten (10) above.

12. 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 store because of loss of or damage to property caused by or resulting from the civil order which Plaintiff alleges is a covered cause of loss under the terms and conditions of the policy quoted above.

13. 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.

14. Plaintiff submitted a claim for business income and extra expense losses caused by the above mentioned actions of civil authority to the Defendant.

15. By letter dated June 1, 2020, Defendant denied coverage for the subject claim. Attached as Exhibit "C" is a copy of the denial letter.

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

17. 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.

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

19. 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, ONE LIFE JEWELRY, INC. d/b/a A SIMPLE PEACE, 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

20. Plaintiff re-alleges and incorporates allegations one (1) through ten (10) above.
21. This is an action for Declaratory Judgment to determine liability under the subject insurance policy pursuant to Chapter 86, Florida Statutes.
22. 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.
23. Defendant denied the claim of Plaintiff alleging that the subject policy did not provide coverage for multiple reasons.

A. Direct Physical Damage

24. Defendant's first basis for denial was that there was no direct physical damage to property at the insured premises.
25. The subject policy under civil authority provides as follows:

5. Additional Coverages

a. Civil Authority.

In this Additional Coverage – Civil Authority, the described premises are premises to which this Coverage Form applies, as shown 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 and necessary Extra Expense 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 continuation 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 for Business Income 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. Civil authority coverage for necessary Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:
(1) Four consecutive weeks after the date of that action; or
(2) When your Civil Authority coverage for Business Income ends:
Whichever is later.**

26. Plaintiff alleges that this additional coverage only requires damage to premises next to Plaintiff's property by stating "[wh]en a Covered Cause of Loss causes damage to property other than property at the described premises". This clause does not require direct physical damage to other property or the insured premises as Defendant has alleged. Defendant misquoted the policy in the denial by adding the condition of direct physical damage to the civil authority section.

27. The above quoted policy provision is ambiguous and unclear as to whether or not direct 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, and a civil authority prevents access to that property as well as the insured property, there is coverage for the business interruption loss.

28. 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 Covered Cause of Loss

29. Secondly, Defendant based its denial of Plaintiff's claim on the allegation that there was no covered cause of loss.

30. Plaintiff alleges that the closure by civil authority is a covered cause of loss. Plaintiff further alleges that the subject policy is an all risk policy which provides that the loss is covered unless specifically excluded.

31. Defendant sites to several exclusions which Plaintiff alleges do not apply to the subject loss. If the loss is not specifically excluded, then pursuant to the terms and conditions of the subject policy, the loss would be covered. Because closure of the business due to civil authority is not an excluded cause of loss, Plaintiff alleges the damage to both other properties and the insured premises were caused by a covered cause of loss and therefore this claim should be covered.

32. The provisions of the policy on which Defendant is relying for the position that this is not a covered cause of loss are ambiguous and unclear as to what should be considered a covered cause of loss and whether shut down due to order of civil authority is a covered cause of loss because this is an all risk policy. A reasonable interpretation of the policy should be that if the loss is not excluded, then there is coverage for the 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. Virus or Bacteria Exclusion

34. Forth, the Defendant alleges that the loss is excluded due to the Virus or Bacteria Exclusion. This specific exclusion provides as follows:

EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA
This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART
STANDARD PROPERTY POLICY

A. The exclusion set forth in Paragraph B. applies to all coverage under all forms and endorsements that comprise this Coverage Part of Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority

B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.

However, this exclusion does not apply to loss or damage caused by or resulting from “fungus”, wet or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.

C. With respect to any loss or damage subject to the exclusion in Paragraph B., such exclusion supersedes any exclusion relating to “pollutants”.

D. The following provisions in this Coverage Part or Policy are hereby amended to remove reference to bacteria:

1. Exclusion of “Fungus”, Wet Rot, Dry Rot And Bacteria; and
2. Additional Coverage – Limited Coverage for “Fungus”, Wet Rot, Dry Rot and Bacteria, including any endorsement increasing the scope or amount of coverage.

E. The terms of the exclusion in Paragraph B., or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Coverage Part of Policy.

35. Plaintiff alleges that this is the standard Insurance Services Office, Inc. (ISO) language which has been incorporated into Defendant's policy. Pursuant to the ISO themselves, this endorsement was only meant to exclude the cost of damages to either the insured location or the insured's products when a virus specifically infected the insured location. See the attached ISO circular regarding this endorsement attached hereto as Exhibit "D". Because there is no allegation that the insured property was specifically affected by the COVID-19 virus, this particular exclusion does not apply,

36. The above quoted policy exclusion is ambiguous and unclear as to what is excluded and should be considered as only excluding costs when a virus or bacteria affects the interior of the insured property or affects the product of the insured. A reasonable interpretation would be that this exclusion does not exclude orders by civil authority regarding COVID-19 because COVID-19 did not actually affect the interior of the insured location and that there is coverage for the 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. Pollutant

38. The Defendant appears to use the definition for pollutant in the denial letter as a basis for the allegation that there is no coverage. The definition is as follows:

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

39. 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 is not applicable.

40. 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.

E. Loss of use or loss of market

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

b. Delay, loss of use or loss of market.

42. 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.

43. 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.

44. 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.

46. 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.

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

48. Plaintiff has no other adequate remedy of law.

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

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

51. 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, ONE LIFE JEWELRY, INC. d/b/a A SIMPLE PEACE, demands judgment declaring that Defendant, OHIO SECURITY INSURANCE COMPANY, 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*

RONALD S. HAYNES, ESQ.
CHRISTOPHER LIGORI & ASSOCIATES
117 S. Willow Ave.
Tampa, FL 33606
(813) 223-2929: Telephone
(813) 251-6853: Facsimile
FLORIDA BAR # 153052
Co-Counsel for Plaintiff
Service Email: Pleadings@Ligorilaw.com

/s/ *James Magazine*

JAMES L. MAGAZINE, ESQUIRE
Florida Bar No. 0847232
LUCAS & MAGAZINE, PLLC
8606 Government Drive
New Port Richey, Florida 34654
(727) 849-5353 [Tel]
(727) 845-7949 [Fax]
Primary Email:
lucasmagazine@lucasmagazine.com
Co-Counsel for Plaintiff