

COMMONWEALTH OF KENTUCKY
McCRACKEN COUNTY CIRCUIT COURT
DIVISION ____
CASE NO. _____

SCHROEDER PUBLISHING CO., INC., :

Plaintiff, :

v. :

Electronically Filed

GREAT NORTHERN INSURANCE
COMPANY, incorporated under the
laws of Indiana, :

c/o CT Corporation System
306 West Main Street, Suite 512
Frankfort, KY 40601 :

COMPLAINT FOR
DECLARATORY JUDGMENT
AND JURY DEMAND

CHUBB GROUP OF INSURANCE
COMPANIES, :

202B Halls Mill Road
Whitehouse Station, NJ 08889 :

Defendants. :

I. INTRODUCTION

1. This is a lawsuit for declaratory judgment filed pursuant to Section 418.005, *et seq.*, of the Kentucky Revised Statutes (“KRS”) and pursuant to Kentucky Civil Rule 57. The Plaintiff made a claim for the loss of business income which it sustained as a result of a “shutdown order” issued by the Governor of the Commonwealth of Kentucky on or about March 25, 2020. Plaintiff also claimed a loss of business income as a result of an order issued by the Governor of the State of Tennessee on or about March 30, 2020.

2. The Plaintiff acted in compliance with the governmental orders described above and submitted to its insurer, the Defendants (“Chubb” or the “insurance

Presiding Judge: HON. W. A. KITCHEN (602373)

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company”), its claim for loss of income. The claim was denied. See Exhibit 1 attached. The Defendants denial of the Plaintiff’s claim establishes the need for declaratory judgment in this action.

II. PARTIES

3. The Plaintiff, Schroeder Publishing Co., Inc. operates a publishing company in Paducah, Kentucky. The Plaintiff also generates business income by holding quilting events in Kentucky and in Tennessee.

4. The Defendant, Chubb, is an insurer based in Indiana and/or based in New Jersey. It issued business insurance policies throughout the Commonwealth of Kentucky through appointed agents who regularly sell policies in Kentucky, and specifically in McCracken County, Kentucky.

III. THE PREVALENCE OF THE COVID-19 VIRUS IN KENTUCKY AND TENNESSEE AND THE RESPONSE OF THE KENTUCKY AND TENNESSEE CIVIL AUTHORITIES

5. As of March 6, 2020, the Governor of Kentucky, recognizing the widespread prevalence of the COVID-19 virus in the Commonwealth of Kentucky and the dangerous and deadly nature of that virus, declared a state of emergency. As of May 6, 2020, there were over 5,800 confirmed cases of the COVID-19 virus in the Commonwealth of Kentucky, including no less than 63 cases in McCracken County, Kentucky.

6. Because of the widespread, dangerous and deadly nature of the virus the Governor issued the shutdown (aka the stay-at-home) order on March 25, 2020. See Exhibit 2 attached.

7. A similar order was entered in the State of Tennessee because of the widespread, dangerous and deadly nature of the virus in that state. See Exhibit 3 attached.

IV. THE INSURANCE POLICY

8. The policy that is at issue in this declaratory judgment action is attached hereto as Exhibit 4. But for a limited amount of information that is placed on declaration pages in the policy it is otherwise substantially a preprinted form document. Most importantly the sections of the policy that are at issue in this declaratory judgment action are preprinted form language and would apply to all similarly situated Kentucky insureds of Chubb.

9. The policy provides coverage for loss of business income arising from an interruption of the Plaintiff's business caused by an order from a civil authority. The precise language is as follows:

We will pay for the actual business income loss you incur due to the actual impairment of your operations...directly caused by the prohibition of access to your premises...by a civil authority.

This prohibition of access by a civil authority must be the direct result of direct physical loss or damage to property away from such premises...provided such property is within one mile.

10. The civil authority additional coverage, cited in the paragraph next above, contains two exclusions: (1) earthquake, or (2) flood. There are no other exclusions for the application of the civil authority additional coverage.

11. The insurance company denied coverage under the civil authority additional coverage stating:

To the extent our further investigation reveals no prohibition of access to your premises, or the premises of a dependent business, caused by a civil authority order issued due to direct physical loss

or damage to property away from such premise but within one mile, the policy's Civil Authority coverage would not apply.

12. At the time that the Defendant denied coverage, the Defendant was well aware of the statewide orders issued by both the State of Tennessee and the Commonwealth of Kentucky. The Defendants were well aware that those orders had been entered because of the widespread nature of the COVID-19 virus, an airborne virus, throughout both the Commonwealth of Kentucky and the State of Tennessee.

13. In summary, at the time the Defendant denied coverage, the Defendant was well aware that:

- Plaintiff had insurance for loss of "business income";
- There is insurance for loss of "business income" if that loss results from the action of a "civil authority" (a government agency);
- The action of the civil authority need not be based upon damage to the insured property, but may be based upon damage to other property within a mile of the insured's premises;
- There was evidence of such property damage, as the presence of the virus in the air and on surfaces may constitute property damage;
- There was evidence of a widespread presence of the virus throughout the Commonwealth of Kentucky and in Paducah, Kentucky, and there was evidence that the presence of the virus constituted a dangerous physical condition; and
- There was evidence of a widespread presence of the virus throughout the State of Tennessee, and there was evidence that the presence of the virus constituted a dangerous physical condition

V. DECLARATORY JUDGMENT – THE ISSUES

14. Section 418.040 of the KRS provides that the Court may enter declaratory judgment declaring the rights of the parties herein. Rule 57 of the Kentucky Rules of

Civil Procedure provides for a jury trial for any factual issues in a declaratory judgment action.

15. The Plaintiff respectfully submits to the Court that there are several issues raised by the Plaintiff's claim and the insurance company's denial that are appropriate for a declaratory judgment at this time. Those issues are as follows:

- Whether the order of the Governor of Kentucky is a valid and enforceable order of a civil authority;
- Whether the order of the Governor of Tennessee is a valid and enforceable order of a civil authority;
- Whether there is any exclusion that is applicable to the civil authority additional coverage other than the exclusion from loss or damage caused by (1) earthquake or (2) flood.

16. The Plaintiff further submits to the Court that the facts and the case law will support a finding in favor of the Plaintiff on each of the above issues. Thus the Court should render declaratory judgment that the Plaintiff has coverage for the Plaintiff's losses of business income under the terms of the Plaintiff's policy.

VI. DAMAGES

17. Should the Court render declaratory judgment on the coverage issue, in favor of the Plaintiff, the Plaintiff does not seek the Court's determination of damages at this time.

18. The policy issued by the Defendant contains a form "appraisal" clause. That clause permits each party to select an appraiser and then the two appraisers select an umpire. The persons who act as appraisers are normally an adjuster, acting on behalf of the company, and a public adjuster employed by the insured.

19. Should the Court grant declaratory judgment in the Plaintiff's favor on the coverage issue, the Plaintiff will first seek to negotiate, in good faith, with the insurance

company in an effort to arrive at a mutually acceptable figure for the loss of business income. If such good faith negotiation does not produce a result then the Plaintiff will invoke the appraisal process to get a damage determination.

WHEREFORE, in consideration of the foregoing, the Plaintiff requests that the Court grant declaratory judgment in favor of the Plaintiff, and order that the Plaintiff has insurance coverage, to be provided by the Defendant CIC, for the Plaintiff's loss of business income arising from the action of a civil authorities, specifically, the respective Governors of Kentucky and Tennessee. The Plaintiff further requests all other proper and appropriate relief including costs and, if provided by law, its attorneys' fees.

JURY DEMAND

Pursuant to the provisions of Kentucky Civil Rule 57, the Plaintiff demands trial by jury on any factual issues in this declaratory judgment action.

Dated this 8th day of June, 2020.

Respectfully submitted,

/s/ Mark P. Bryant
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