

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

THE GREAT ESCAPE ON IRVING INC.,)
 Plaintiff,)
v.)
)
ERIE INSURANCE,)
 Defendant,)

VERIFIED COMPLAINT

Plaintiff THE GREAT ESCAPE ON IRVING INC. ("Plaintiff"), for its Complaint against Defendant ERIE INSURANCE ("Defendant"), alleges as follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. Plaintiff is an Illinois corporation with its principal place of business at 9540 Irving Park Road, Schiller Park, Illinois.
2. Plaintiff provides restaurant, lounge, banquet, & catering services.
3. Plaintiff has been forced, by recent orders issued by the State of Illinois, to cease most of its operations — through no fault of their own — as part of the State’s efforts to slow the spread of the COVID-19 global pandemic. The State has deemed Plaintiff’s business non-essential and specifically forbidden restaurant and bar activities.
4. The closures mandated by these State orders present an existential threat to small businesses such as Plaintiff.
5. To protect its businesses from situations like these, which threaten its livelihoods based on factors wholly outside of its control, Plaintiff obtained business interruption insurance from Defendant.
6. A copy of the insurance policy is attached hereto as Exhibit A.
7. Defendant is an insurance company whose headquarters are in East Peoria, Illinois. Defendant sold Plaintiff a policy to cover Plaintiff’s activities in Schiller Park, Illinois.

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

9. As a result, Plaintiff now bring this action against Defendant for its failure to honor its obligations under the insurance policies issued to Plaintiff, which provide coverage for losses incurred due to a necessary suspension of their operations, including when their businesses are forced to close due to a government order.

10. On March 15, 2020, during the term of the policies issued by Defendant to Plaintiff, Illinois Governor Pritzker issued an order closing 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, including Plaintiff's business. The March 15 and March 20 orders are hereinafter collectively referred to as the "Closure Orders."

11. As a result of the Closure Orders, the Plaintiff have been forced to halt ordinary operations, resulting in substantial lost revenues (down to about about a third pf their regular revenue) and forcing the Plaintiff to go down to a skeleton crew.

12. But despite Defendant's express promise in its policies to cover the Plaintiff's business interruption losses when the government forces them to close, Defendant has issued a blanket denial to Plaintiff for any losses related to the Closure Orders without first conducting a "reasonable investigation based on all available information" as required under Illinois law.

13. Defendant has made the claim that the claim is not covered because there is no physical damage to the property. But Defendant's position that the presence of a substance like COVID-19 does not result in property damage is contrary to the law in Illinois. Illinois courts have consistently held that the presence of a dangerous substance in a property constitutes "physical loss or damage."

See, e.g., Bd. of Educ. of Twp. High Sch. Dist. No. 211 v. Int'l Ins. Co., 720 N.E.2d 622, 625–26 (Ill. Ct. App. 1999), *as modified on denial of reh'g* (Dec. 3, 1999).

14. If Defendant had wanted to exclude pandemic-related losses under the Plaintiffs' policies — as many other insurers have done in other policies — it easily could have attempted to do so on the front-end with an express exclusion. Instead, Defendant waited until after it collected Plaintiffs' premiums, and after a pandemic and the resulting Closure Orders caused catastrophic business losses to Plaintiffs, to try to limit its exposure on the backend through its false assertion that the presence of the coronavirus is not “physical loss.”

15. Thus, Defendant's coverage denial is arbitrary and unreasonable. The denials appear 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 policies they sold to Plaintiffs in exchange for valuable premiums.

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

17. In exchange for substantial premiums, Defendant sold commercial property insurance policies 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 (hereinafter “Policy” or “Policies”).

18. On March 11, 2020, the World Health Organization declared that the emerging threat from the novel coronavirus—otherwise known as COVID-19—constituted a global pandemic.

19. In response to the pandemic, and the spread of the coronavirus in Chicago and throughout Illinois, Illinois Governor Pritzker issued Executive Order 2020-07 on March 15, 2020 requiring that all bars, restaurants, and movie theaters close to the public beginning on March 16, 2020 and continuing through March 30, 2020. The continuous presence of the coronavirus on or around Plaintiff's premises has rendered the premises unsafe and unfit for their intended use and therefore caused physical property damage or loss under the Policies.

20. Executive Order 2020-07 was issued in direct response to these dangerous physical conditions, and prohibited the public from accessing Plaintiff's business, thereby causing the necessary suspension of their operations and triggering the Civil Authority coverage under the Policies. Executive Order 2020-07 specifically states, "the Illinois Department of Public Health recommends Illinois residents avoid group dining in public settings, such as in public entertainment venues, which usually involves prolonged close social contact contrary to recommended practice for social distancing," and that "frequently used surfaces in public settings, including bars and restaurants, if not cleaned and disinfected frequently and properly, also pose a risk of exposure."

21. Governor Pritzker's March 20, 2020 Closure Order (Executive Order 2020-10) closing all "non-essential" businesses in Illinois likewise was made in direct response to the continued and increasing presence of the coronavirus on property or around Plaintiff's premises. Like the March 15, 2020 Closure Order, the March 20, 2020 Order prohibited the public from accessing Plaintiffs' restaurants, thereby causing the necessary suspension of the majority of their operations and triggering the coverage under the Policies.

22. As a result of the Closure Orders, the Plaintiff has suffered substantial business income losses. The covered losses incurred by Plaintiff and owed under the Policies is increasing every day.

COUNT I: DECLARATORY JUDGMENT

23. Plaintiff incorporates by reference, as if fully set forth herein, the facts set forth in paragraphs 1 - 22 above, as though fully pleaded herein.

24. 735 ILCS 5/2-701 states in relevant part: "Declaratory judgments. (a) No action or proceeding is open to objection on the ground that a merely declaratory judgment or order is sought thereby. The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, or of any deed, will, contract or other written instrument, and a declaration of the rights of the parties interested."

25. The Policy is an insurance contract under which Defendant was paid premiums in exchange for their 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 them to close their businesses.

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

27. 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 their businesses stemming from the COVID-19 pandemic.

28. An actual case or controversy exists regarding Plaintiff's rights and Defendant's obligations under the Policies to reimburse Plaintiff for the full amount of losses incurred by Plaintiff in

connection with Closure Orders and the necessary interruption of its businesses stemming from the COVID-19 pandemic.

29. Plaintiff seeks a declaratory judgment from this Court declaring the following: (a) Plaintiff's losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the Policies; (b) Defendant has waived any right they may have had to assert defenses to coverage or otherwise seek to bar or limit coverage for Plaintiff's losses by issuing blanket coverage denials without conducting a claim investigation as required under Illinois law; and (c) 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 their businesses stemming from the COVID-19 pandemic.

WHEREFORE Plaintiff respectfully prays that the Court enter a declaratory judgment in favor of Plaintiff and against Defendant, declaring as follows: (a) Plaintiff's losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the Policies; (b) 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 blanket coverage denials without conducting a claim investigation as required under Illinois law; and (c) Defendants 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 their businesses stemming from the COVID-19 pandemic; and further grant such further relief as may be deemed equitable and just.

COUNT II: BREACH OF CONTRACT

30. Plaintiff incorporates by reference, as if fully set forth herein, the facts set forth in paragraphs 1 - 22 above, as though fully pleaded herein.

31. Each 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 them to close their businesses.

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

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

34. As a result of Defendant's breaches of the Policies, Plaintiff has sustained substantial damages for which Defendant is liable, in an amount to be established at trial.

WHEREFORE Plaintiff respectfully prays that the Court find liability in its favor and against Defendant in an amount to be proven at trial but not less than \$350,000, for all recoverable damages including pre-judgment interest, and for Plaintiff's fees and costs, and such other relief as may be equitable and just.

COUNT III: STATUTORY PENALTY FOR BAD FAITH DENIAL OF INSURANCE
UNDER 215 ILCS 5/155

35. Plaintiff incorporates by reference, as if fully set forth herein, the facts set forth in paragraphs 1 - 22 above, as though fully pleaded herein.

36. Upon receipt of the Closure Order Claims, Defendants quickly 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.

37. Defendant's denials constitute "improper claims practices" under Illinois law—namely Defendant's (1) refusals 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).

38. Therefore, pursuant to 215 ILCS 5/155, Plaintiff requests that, in addition to entering a judgment in favor of Plaintiffs and against Defendants for the amount owed under the Policies at

the time of judgment, the Court enter a judgment in favor of Plaintiff and against Defendants for an amount equal to the greater of (1) 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.

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

WHEREFORE Plaintiff prays that this Honorable Court enter a judgment in favor of Plaintiff and against Defendant in an amount equal to the greater of (1) 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; Enter a judgment in favor of Plaintiff and against Defendant in an amount equal to all attorney fees and related costs incurred for the prosecution of this coverage action against Defendants, pursuant to 215 ILCS 5/155, which amount to be established at the conclusion of this action; Award to Plaintiff and against Defendant 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 for the full amount in costs incurred in connection with Closure Order Claims; and for such further relief as may be equitable and just.

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Respectfully submitted,

s/Mark Becker

Verification Of Pleadings

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



Brian Great