

**IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA**

CASE NUMBER:

UROGYNECOLOGY SPECIALIST OF FLORIDA LLC,

Plaintiff,

vs.

SENTINEL INSURANCE COMPANY, LTD.,

Defendant.

_____ /

COMPLAINT

COMES NOW the Plaintiff, by and through the undersigned attorney, and hereby sues the Defendant, Sentinel Insurance Company, Ltd. (hereinafter sometimes referred to as “Sentinel”), and alleges as follows:

JURISDICTION AND VENUE

1. At all material times hereto, Plaintiff is a Florida limited liability company with its principle place of business in Orange County, Florida.
2. Defendant corporation was and is a Florida corporation with principal place of business in Florida, and the policy of insurance written by Sentinel was issued by Sentinel in the State of Florida.
3. At all material times relevant hereto, Defendant Sentinel was a corporation duly licensed to transact insurance business in the State of Florida. Defendant does business, has offices, and/or maintained agents for the transaction of its customary business in Orange County, Florida.
4. Jurisdiction and venue are proper in Orange County, Florida.

5. This is an action for breach of contract with damages greater than Thirty Thousand Dollars (\$30,000.00), exclusive of interest, costs, and attorney's fees.
6. This action also seeks coverage for a declaratory judgment action in excess of the jurisdictional limits of this Court, Therefore, this Court has jurisdiction over this action for declaratory judgment pursuant to Fla. Stat. §86.011.

NATURE OF ACTION

7. This is an action for breach of an insurance contract due to Defendant's failure to pay insurance proceeds that were due and owing to Plaintiff under a policy of insurance issued by Defendant to Plaintiff.
8. This is also an action for Declaratory Judgment pursuant to Fla. Stat. §86.011 to determine questions of insurance coverage under the policy of insurance issued by Defendant to Plaintiff.
9. Plaintiff sought Business Owner's insurance from Defendant Sentinel to cover its property, and a policy of insurance, including but not limited to coverages to protect against loss of Business Income, Extra Expense, Action of Civil Authority, Extended Business Income, Accounts Receivable, and a Limited Fungi, Bacteria, or Virus Endorsement was issued by the Defendant.
10. Plaintiff is a named insured under Policy No.: 21 SBA BX5636. A true and correct copy of the insurance policy is in control of Defendant and will be provided through discovery.
11. Plaintiff faithfully paid insurance policy premiums to Sentinel.

12. The insurance policy between Defendant and Plaintiff specifically provided additional coverages for loss of Business Income, Extra Expense, Action of Civil Authority, Extended Business Income, Accounts Receivable, and a Limited Fungi, Bacteria, or Virus Endorsement.
13. On or about March of 2020, the United States of America became infected with SARS-CoV-2 (commonly and hereinafter referred to as “COVID-19”) which resulted in a nationwide pandemic. As a result of this pandemic, Urogynecology Specialist of Florida LLC’s property sustained direct physical loss or damages and will continue to sustain direct physical loss or damages covered by the policy issued by Defendant.
14. Policy coverages include, but are not limited to loss of Business Income, Extra Expense, Action of Civil Authority, Extended Business Income, Accounts Receivable, and Fungi, Bacteria, or Virus. As a direct result of this pandemic, Urogynecology Specialist of Florida LLC’s property has been damaged and cannot be used for its intended purpose.
15. Plaintiff’s loss of use of the insured property and insured property’s inability to function as contemplated and intended by Plaintiff and Defendant is a direct physical loss. As a result of this direct physical loss, Plaintiff has suffered loss of Business Income, has incurred Extra Expenses to minimize the suspension of business and continue its operations, has lost Accounts Receivable, and has suffered other losses and damages.

**COUNT I-BREACH OF CONTRACT AGAINST
DEFENDANT**

16. Plaintiff realleges paragraphs 1-15 and incorporates the same by reference herein.

17. This is an action for breach of contract with damages greater than Thirty Thousand Dollars (\$30,000.00), exclusive of interest, costs, and attorney's fees.
18. Plaintiff's business insurance with Defendant Sentinel was in full force and effect as to Urogynecology Specialist of Florida LLC when its property was damaged, and it is a named insured under Policy Number 21 SBA BX5636. A true and correct copy of the policy is in control of Defendant Sentinel and will be provided through discovery. Defendant is not prejudiced by the failure to attach a policy at this time because Defendant is already in possession of the complete policy upon which this suit is based.
19. During the Policy period, Plaintiff sustained a direct physical loss to its covered property from a covered cause of loss. Plaintiff also sustained a loss of Business Income, Extra Expense, Extended Business Income, and Accounts Receivable, in addition to other losses and damages.
20. Plaintiff duly notified Defendant of the loss and allowed for all necessary inspections and evaluations to be made at the insured premises.
21. This is an action related to Defendant's failure to place the insured premises in its pre-loss condition and adequately compensate Plaintiff for loss of Business Income, Extra Expense, Extended Business Income, Accounts Receivable, and other losses and damages contemplated by the insurance contract between Plaintiff and Defendant.
22. Plaintiff has complied or substantially complied with all conditions to entitle Plaintiff to recover under the policy, the conditions have been waived, or the language of the policy created an impossibility for the conditions to be complied

with.

23. Defendant Sentinel has failed to provide coverages for Plaintiff's losses and has failed to pay the reasonable value of Plaintiff's losses needed to place the insured in its pre-loss condition.
24. Defendant's refusal to provide coverages to and to reimburse Plaintiff adequately for the damages that resulted, and otherwise make Plaintiff whole, is a breach of contract.
25. Plaintiff has been damaged as a result of Defendant's breach in the form of insurance proceeds that have not been paid, interest, costs, and attorney's fees.
26. As a result of Defendant's breach of contract, it has become necessary that Plaintiff retains the services of the undersigned attorney. Plaintiff is obligated to pay a reasonable fee for the undersigned attorney's services in bringing this action, plus necessary costs.
27. Plaintiff has been and remains fully prepared to comply with the obligations pursuant to the aforesaid contract of insurance.
28. Plaintiff is entitled to recover attorney's fees and costs under F.S. § 627.428, F.S. § 626.9373, F.S. §57.041, and F.S. § 92.231.

WHEREFORE, Plaintiff demands judgment against Defendant for compensatory damages, consequential damages, interest, costs, and attorney's fees pursuant to F.S. § 627.428, F.S. § 626.9373, F.S. §57.041, and F.S. § 92.231. Plaintiff further demands trial by jury.

COUNT II – DECLARATORY JUDGMENT

29. Plaintiff realleges paragraphs 1-15 and incorporates the same by reference herein.

30. This is an action for declaratory relief brought pursuant to Fla. Stat. § 86.011. Plaintiff is entitled to have any doubt regarding the existence or nonexistence of any right or duty under the insurance policy in question removed.
31. Plaintiff is unsure of Plaintiff's right to coverage for direct physical loss, Business Income, Extra Expense, Action of Civil Authority, Extended Business Income, Accounts Receivable, and Fungi, Bacteria, or Virus. Plaintiff believes the Policy provides coverage for all of its COVID-19 related injuries, damages, and losses. Plaintiff has therefore filed this instant action seeking a determination whether the Policy provides coverage to the Plaintiff for its injuries, damages, and losses.
32. On or about March 1, 2020, Florida Governor DeSantis issued Executive Order No.: 20-51 and declared a state of emergency in Florida as a result of COVID-19.
33. On or about March 20, 2020, Florida Governor DeSantis issued Executive Order No.: 20-72 "Non-essential Elective Medical Procedures" limiting all "non-essential" and elective medical and surgical procedures.
34. Specifically, the Executive Order reads as:

Section 1.

- A. All hospitals, ambulatory surgical centers, office surgery centers, dental, orthodontic and endodontic offices, and other health care practitioners' offices in the State of Florida are prohibited from providing any medically unnecessary, non-urgent or non-emergency procedure or surgery which, if delayed, does not place a patient's immediate health, safety, or well-being at risk, or will, if delayed, not contribute to the worsening of a serious or life-threatening medical condition. Accordingly, all health care practitioners licensed in the State of Florida, including dentists, shall immediately cease performing these elective services.
35. Plaintiff's business is a medical practice, specifically a gynecology practice, in Orlando, Florida, which was directly affected by Governor DeSantis' order.

36. Plaintiff received insurance from Sentinel which consists of coverage for Business Income, Extra Expense, Action of Civil Authority, Extended Business Income, Accounts Receivable, and a Fungi, Bacteria, or Virus endorsement.
37. The Policy contains coverage for:

5. Additional Coverages

o. Business Income

(1) We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your “operations” during the “period of restoration”. The suspension must be caused by a direct physical loss of or physical damage to property at the “scheduled premises”, including personal property in the open (or in a vehicle) within 1,000 feet of the “scheduled premises”, caused by or resulting from a Covered Cause of

Loss.

p. Extra Expense

(1) We will pay reasonable and necessary Extra Expense you incur during the “period of restoration” that you would not have incurred if there had been no direct physical loss or physical damage to property at the “scheduled premises”, including personal property in the open (or in a vehicle) within 1,000 feet, caused by or resulting from a Covered Cause of Loss.

q. Civil Authority

(1) This insurance is extended to apply to the actual loss of Business Income you sustain while access to your “scheduled premises” is specifically prohibited by order of a civil authority as the direct result of a Covered Cause of Loss to property in the immediate area of your “scheduled premises”.

Income

r. Extended Business Income

(1) If the necessary suspension of your “operations” produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:

(a) Begins on the date property is actually repaired, rebuilt, or replaced and “operations” are resumed; and

(b) Ends on the earlier of:

(i) The date you could restore your “operations” with reasonable speed, to the condition that would have existed

if

no direct physical loss or damage occurred; or

(ii) 30 consecutive days after the date determined in (1)(a) above.

38. The Policy also contains coverage for:

6. Coverage Extensions

a. Accounts Receivable

- (1) You may extend the insurance that applies to your Business Personal Property, to apply to your accounts receivable.

39. The Policy also contains the following endorsement, which Plaintiff paid a premium for:

LIMITED FUNGI, BACTERIA OR VIRUS COVERAGE

B. The following Additional Coverage is added to Paragraph A.4 of the Standard Property Coverage Form...

1. Limited Coverage for “Fungi”, Wet Rot, Dry Rot, Bacteria and Virus

- a. The coverage described in **1.b.** below only applies when the “fungi”, wet or dry rot, bacteria or virus is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.
- b. We will pay for loss or damage by “fungi”, wet rot, dry rot, bacteria and virus. As used in this Limited Coverage, the term loss or damage means:
 - (1) Direct physical loss or direct physical damage to Covered Property caused by “fungi”, wet rot, dry rot, bacteria or virus, including the cost of removal of the “fungi”, wet rot, dry rot, bacteria or virus;
 - (3) The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that “fungi”, wet rot, dry rot, bacteria or virus are present.

40. On or about March 9, 2020, Plaintiff submitted its claim to Defendant for Loss of Business Income, Extra Expense, Action of Civil Authority, Extended Business Income, Accounts Receivable, and Fungi, Bacteria, or Virus coverage, due to the COVID-19 pandemic.
41. On or about March 26, 2020, Defendant denied Plaintiff’s claim, a copy of the claim determination letter is attached hereto as “Exhibit A.”
42. Plaintiff suffered a direct physical loss when it was forced to limit its services in an effort to “help stop the spread” of COVID-19 and due to Governor DeSantis’ Executive Order limiting all “non-essential” medical and surgical procedures.

43. There is a bona fide, actual dispute between the parties. Plaintiff is unsure of its rights and obligations under the insurance policy in question and is entitled to have the doubt removed. There is a present and ascertainable state of facts, and the Court is not being asked to merely give legal advice.
44. As a result of the dispute, it has become necessary that Plaintiff retains the service of the undersigned attorney. Plaintiff is obligated to pay a reasonable fee for the undersigned attorney's services in bringing this action, plus necessary costs.

WHEREFORE, Plaintiff requests this Court to:

- a. Take jurisdiction of the subject matter and parties thereto;
- b. Declare that Plaintiff has suffered a direct physical loss;
- c. Declare that Plaintiff's loss is a covered loss which is not excluded or limited under the Policy.
- d. Declare that Plaintiff has sustained loss of Business Income, Extra Expense, Action of Civil Authority, Extended Business Income, Accounts Receivable due to the necessary suspension of its operation.
- e. Declare that Plaintiff paid a premium for Fungi, Bacteria, or Virus Coverage and that the endorsement affords the Plaintiff coverage.
- f. Order full disclosure of all documents and allow full and liberal discovery of all facts that may lead to admissible evidence relevant to the determination herein, including but not limited to, production of the complete policy of

insurance, and a complete copy of the written materials in the possession of the Defendant that would shed light on the issues involved herein;

- g. Determine applicable law, including the provisions of Florida Statutes that apply to the policy and to the parties;
- h. Declare each policy provision not in conformity with Florida law be amended to comply with Florida law;
- i. Declare that any ambiguities in the statute or policy be construed in favor of insurance coverage;
- j. Declare that the statutes and policy provisions be construed strictly and most strongly against the insurer, and liberally in favor of the insured, so as to affect the dominant purpose of indemnity or payout to the insured;
- k. Declare that the policy of insurance covering the insured provides coverage for the claim submitted by the insured;
- l. Declare that the Plaintiff is entitled to a claim for attorney's fees and costs against Defendant under Fla. Stat. §627.428, §92.231, §57.104, §626.9373, and §57.041 and determine amounts thereunder;
- m. Determine and declare any other material matters pertaining to the respective rights and responsibilities under the policy, as needed to do complete justice in this case.

Plaintiff further demands trial by jury on all issues so triable in accordance with Florida Statutes, Chapter 86, as well as for entry of judgment for Plaintiff as to all issues to be raised in this declaratory action, and against Defendant for insurance proceeds, consequential damages, attorney's fees, and costs pursuant to Fla. Stat. §627.428, §92.231, §57.104, §626.9373, and §57.041.

Dated May 22, 2020.



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