

2020-005411-2

CAUSE NO. _____

BRITT HOLDINGS LLC d/b/a/ BREWER CHIROPRACTIC CLINIC, PLAINTIFF	§	IN THE COUNTY COURT AT LAW
	§	
vs.	§	NO. _____
	§	
HARTFORD LLOYD'S INSURANCE COMPANY, DEFENDANT	§	TARRANT COUNTY, TEXAS
	§	

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

PLAINTIFF files this Original Petition and states the following:

1.0 PARTIES, JURISDICTION AND VENUE

1.1 Plaintiff intends that discovery be conducted under Discovery Level 2. Plaintiff affirmatively pleads that they are seeking monetary relief of more than \$100,000 but no more than \$200,000, and non-monetary relief.

1.2 Plaintiff **BRITT HOLDINGS LLC d/b/a/ BREWER CHIROPRACTIC CLINIC** (hereinafter "**Brewer**") is a limited liability company with all its members being citizens of the State of Texas. Its principal place of business is located at 702 W. IH-20 Ste. 100, Arlington, TX 76017, Tarrant County, Texas (hereinafter "Premises"). Brewer provides chiropractic care to patients.

1.3 Defendant **HARTFORD LLOYD'S INSURANCE COMPANY** (hereinafter "**Hartford**") is a foreign insurance company. It is authorized by the Texas Department of Insurance to conduct insurance business in Texas. This suit arises out of the insurance business purposefully and continuously conducted with Brewer in the State of Texas, relating to the insurance coverage of the Premises. Hartford may be served process on its agent for service of process: **CT CORPORATION SYSTEM, 1999 BRYAN ST. STE. 900 DALLAS, TX 75201** or wherever Defendant may be found. Issuance of citation to this Defendant is requested.

1.4 Pursuant to Rule 47 of the Texas Rules of Civil Procedure, damages and subject matter in controversy are within the jurisdictional limits of this court.

1.5 This Court has jurisdiction over the parties because the Defendant is involved in the business of writing insurance policies in this State, and the action arises out of the insurance policy issued by the Defendant to a Texas entity in the State of Texas.

1.6 Venue in this County is proper in this cause under Section 15.002(a) of the Texas Civil Practice and Remedies Code because this is the County in which all or part of the cause of action occurred.

2.0 FACTS OF LOSS

2.1 According to information published by the Insurance Information Institute, the U.S. insurance industry collected a net premium of \$1.22 trillion in 2018. Premiums record by the property/casualty insurers accounted for 51% of that amount. Between 2014 and 2018, these insurers wrote net premiums each year of between \$497 billion to \$612.6 billion but only incurred losses of between \$277.7 billion and \$360.9 billion.

2.2 Brewer purchased an all-risk commercial property insurance policy from Hartford to protect it in the event of property loss and business interruption. COVID-19 and the resulting response by state and local governments has caused physical loss of Brewer's property and has significantly disrupted Brewer's business. Yet, as of this date, Hartford has refused to honor its promise to provide the protection that Brewer has purchased.

2.3 Moreover, Brewer is not unique. The insurance industry appears to be taking a uniform approach to the current pandemic: deny coverage even when the policy they drafted and offered to insureds, and the policy paid for by the insureds, does not contain an exclusion for pandemic-related or virus-related losses. Brewer's policy with Hartford is one such policy and exemplifies the broken promise from insurance companies across the country.

2.4 The Premises are located in Tarrant County. On March 13, 2020 Tarrant County Judge Whitley issued a Declaration of Local Disaster due to COVID-19. On March 24, Judge Whitley issued an Executive Order which required all persons residing in Tarrant County to stay home, and all businesses to be closed to the public. The businesses that were allowed to remain open required Social Distancing (§ 8), and all "elective" medical procedures were prohibited. Medical providers were required to identify procedures that are deemed elective "by assessing which procedures can be postponed or cancelled based on patient risk considering the emergency need for redirection of resources to COVID-19 response".

2.5 On April 3, 2020 the Tarrant County Executive Order was amended as follows: "All elective medical, surgical, and dental procedures are prohibited anywhere in Tarrant County. All licensed health care professionals shall postpone all surgeries and procedures that are not immediately medically necessary to correct a serious medical condition of, or to preserve the life

of, a patient who without immediate performance of the surgery or procedure would be at risk for serious adverse medical consequences or death as determined by the patient's physician.” This Executive Order was to remain in place until April 30, 2020.

2.6 Other state and federal government acts took place during this time, resulting in restrictions of access to the Premises by the employees and the public, as well as the services and procedures permitted thereon, in response to COVID-19.

2.7 Moreover, Brewer suffered a direct physical loss of COVID-19 contamination of the Premises, as discussed below.

2.8 Due to the Actions of Civil Authority undertaken by Tarrant County, the State of Texas and the federal government, and the direct contamination of the premises by COVID-19 (as discussed below), Brewer was forced to suspend parts of its business entirely, and significantly reduce and limit services and procedures performed at the Premises. Specifically, **from April 3 through April 30, 2020** only a few emergency services or procedures were being performed. Due to the federal, state, county, local and all other civil authority orders, Brewer experienced a significant business interruption and loss of Business Income.

2.9 Brewer suffered a direct physical loss due to a contamination of its premises by COVID. In March, 2020 Brewer continued to provide services to the first respondents and medical professionals, as well as those whose treatment could not be reasonably delayed. Brewer patient DD was a medical professional who treated confirmed COVID patients; she was physically present at the Premises on March 27, 2020. Brewer patient JK was a medical professional who treated confirmed COVID patients, she was physically present at the Premises on March 23, 2020. Brewer patient KA was exposed to confirmed COVID patients on 3/20; and was physically present on premises on March 31, 2020. **Thus, Brewer suffered contamination of its premises with COVID beginning on or about March 31, 2020; which was a direct physical loss.**

2.10 Based on the information provided by CDC at the time, lack of symptoms does not indicate absence of COVID (a study of a cruise ship crew performed by the CDC indicated that 46% of those tested positive for COVID displayed no symptoms). According to the CDC, the COVID virus survives on surfaces up to 17 days after the contact with infected persons. Thus, even by the most conservative estimate, the Premises remained contaminated by COVID for at least 31 days beginning March 31 (14 days from the employees' last known contact with the

exposed patients, plus 17 days from the contact of the employees with the surfaces), **through April 30, 2020.**

2.11 The loss period extended from March 24 through May 1, 2020. The harms and losses suffered by Brewer for that time period exceeded \$320,568.78.

3.0 INSURANCE POLICY AND PROMISED BENEFITS

3.1 Hartford has sold and issued to Brewer the subject Insurance Policy (policy no. *** 2006), which was in effect January 1, 2020-20201, for the business Premises location of 702 W IH 20 Ste 100, Arlington TX 76017, Tarrant County, Texas.

3.2 The Policy was issued on the Businessowners Special Property Coverage Form SS 00 07 07 05; wherein Hartford agreed to “pay for direct physical loss” to “Covered Property” resulting from a “Covered Cause of Loss.” The “Covered Property” referred to the subject Premises.

3.3 The “Covered Cause of Loss” is defined as “RISKS OF DIRECT PHYSICAL LOSS unless the loss is: a. Excluded ... or b. Limited...” (Section A(3)). This is an “all-risk” property damage Policy.

3.4 The Special Property Coverage Form, under a section entitled “Duties in the Event of Loss” mandates that the insured “must see that the following are done in the event of loss. . . [t]ake all reasonable steps to protect the Covered Property from further damage and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim.” This is commonly referred to as “Sue and Labor” coverage.

3.5 The Policy also contained the Limited Fungi, Bacteria or Virus Coverage, Form SS 4093 0705 which provided as follows: “We will pay for loss ... by ... bacteria and virus.” The Limited Fungi provided coverage for the suspension of operations of up to 30 days. The policy limit provided by such coverage was \$50,000.00.

3.6 The Policy also specifically included Civil Authority coverage, “q. Civil Authority” which extended the insurance to apply to the actual loss of Business Income sustained when access to the scheduled premises “is specifically prohibited by order of a civil authority as a direct result of a Covered Cause of Loss to the property in the immediate area of” the scheduled premises, to begin 72 hours after the order of a civil authority... (P.11/25 – Form SS 00 07 07 05). Such coverage would end at the earliest of “(a) When access is permitted to your "scheduled premises"; or (b) 30 consecutive days after the order of the civil authority.”

3.7 Losses caused by the COVID-19 contamination of the Premises, and the orders issued by local, state, and federal authorities, triggered the Business Income, Extra Expense, Limited Fungi, Civil Authority, and Sue and Labor provisions of the Hartford policy. The Executive Orders, including the issuance of the Tarrant County and the State of Texas orders, prohibited access to Brewer's Premises by the patients and the providers in response to dangerous physical conditions resulting from a Covered Cause of Loss. Moreover, actual physical contamination with the COVID virus took place at the premises from March 31 through April 30, 2020.

3.8 As a result of all events described herein, Brewer lost Business Income and incurred Extra Expense, for which the coverage is requested herein.

4.0 COVERAGE DISPUTE

4.1 On June 4, 2020, Brewer requested coverage and served Hartford with the proof of loss.

4.2 On June 10, 2020 Hartford responded with a denial of coverage, by issuing what appears to be a "form" letter to Brewer.

4.2 In the June 10, 2020 letter, Hartford wrongly denied coverage on the grounds that "no evidence [was] shown to support that coronavirus was at the scheduled premises" and that "Hartford does not concede the virus constitutes direct physical damage or direct physical loss. Moreover, even if the virus does constitute direct physical loss, there are exclusions within the policy that bar coverage."

4.3 In the June 10, 2020 letter, Hartford did not address why it believed Brewer was not entitled to the Additional Coverage provided by the "Limited Fungi, Bacteria or Virus" Endorsement Form SS 4093 0705, which specifically provides coverage when "virus" occurs during the policy period, and causes damage.

4.4 In the June 10, 2020 letter, Hartford denied Brewer the "civil authority" coverage because Hartford wrongly alleged that "civil authority order that impacted the insured's business was not the direct result of damage to property that had occurred in the immediate area of your premises."

4.5 Brewer has suffered and continues to suffer a loss of their operations as defined by the terms of the policy, and other harms and losses, due to the denial of its claim by Hartford.

5.0 CAUSE OF ACTION FOR BREACH OF CONTRACT

- 5.1 The Policy constitutes a binding contract between Brewer and Defendant Hartford.
- 5.2 Brewer has satisfied and performed all applicable terms and conditions of the Policy by paying all premiums due under the Policy. Alternatively, Hartford has waived any such term or condition and may not assert any term or condition in the Policy as a defense to liability thereunder.
- 5.3 The pandemic, the health care crisis, the presence of individuals infected with COVID-19, and the contamination of the Premises with COVID-19 have resulted in Brewer suffering a physical loss to the insured property, and alternatively damage to the insured property, and suspension of the business that is covered under the provisions of the Policy.
- 5.4 Alternatively, coverage is available under Civil Authority coverage under the Policy.
- 5.5 Alternatively, coverage is available under the “Limited Fungi, Bacteria or Virus” Endorsement Form SS 4093 0705.
- 5.6 Because there was a direct physical loss to the covered Premises, exclusions related to consequential losses and time element exclusions are inapplicable. Other exclusions asserted in the correspondence of June 10, 2020 are likewise not applicable.
- 5.7 Hartford is estopped and/or has waived the right to rely on any exclusions not listed in the June 10, 2020 letter as a result of its premature and limited inquiry into, and denial of, coverage. Hartford failed to give proper notice and disclosure of any other alleged exclusion and is thus barred from relying upon it herein.
- 5.8 On information and belief, Hartford is barred from relying on any exclusion as a result of regulatory and/or administrative estoppel.
- 5.9 The limitations on the policy language as interpreted by Hartford are unconscionable and/or contrary to public policy, and cannot be enforced as written.
- 5.10 Hartford has breached the contract by its wrongful denial, causing delay and/or loss of receipt of the policy benefits and additional actual and/or consequential damages.
- 5.11 Plaintiff is entitled to recovery of attorney’s fees incurred in the prosecution of these claims.

6.0 CAUSE OF ACTION FOR BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING, GROSS NEGLIGENCE AND/OR MALICE

6.1 This cause of action arises from Texas law, which recognizes a special relationship between Hartford and Brewer as a result of the first-party insurance policy issued by Hartford. Inherently unequal bargaining power existed between Brewer and Hartford at the time of the purchase of the policy and still exists at this time.

6.2 Hartford had no reasonable basis for denying or delaying payment of Brewer's claims. Hartford knew or should have known that it had no reasonable basis for denial. Hartford considered only their own interests, proceeded only according to their one-sided and self-serving interpretation of the Policy, and attempted to conceal from Brewer that Hartford in fact made no effort to consider Brewer's interests. Hartford pre-textually looked only for ways to avoid coverage rather than first trying to find coverage.

6.3 Hartford had a duty to investigate the claims fairly and objectively but they clearly failed to make any attempt to do so. Nonetheless, they are charged with full and complete knowledge of what a reasonable investigation would have revealed, and their actions must be judged accordingly.

6.4 Accordingly, Hartford failed to attempt in good faith to effectuate a prompt, fair and equitable settlement of a claim where their liability had become reasonably clear.

6.5 Hartford's breach of the duty of good faith and fair dealing proximately caused actual and consequential damages to the Brewer.

6.6 Hartford's breach of the duty of good faith was malicious and/or grossly negligent and therefore supports an award of exemplary damages. When viewed objectively from the standpoint of Defendant at the time of the occurrence in question, Defendant's conduct involved an extreme degree of risk, considering the probability and magnitude of the harm to others, or the risk of financial ruin to others, and of which Defendant had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others.

6.7 In the alternative, Defendant Hartford had specific intent to cause substantial harm to Plaintiff.

6.8 Each of the acts described above, together and singularly, was done knowingly and was a producing cause of Plaintiff's damages described herein.

7.0 CAUSE OF ACTION FOR VIOLATION OF TEXAS PROMPT PAY ACT

7.1 Hartford has failed to timely and promptly pay as required under the Texas Insurance Code §§ 542.055-542.059.

7.2 Hartford should be ordered to pay “in addition to the amount of the claim, interest on the amount of the claim at the rate of 18 percent a year as damages, together with reasonable and necessary attorney’s fees. Nothing in this subsection prevents the award of prejudgment interest on the amount of the claim, as provided by law.” TEX. INS. CODE § 542.060(a).

7.3 Brewer was forced to retain the services of an attorney and law firm to represent it with respect to its claims against Hartford because of Defendant’s wrongful acts and omissions. Id. at § 542.060(b).

8.0 COSTS AND INTEREST

It was necessary for Plaintiff to expend money as costs of Court requisite to prosecute this cause of action. Therefore, an award of these costs to Plaintiff is authorized by Rule 131 of the Texas Rules of Civil Procedure. Plaintiff is also seeking the pre-judgment and post-judgment interest as allowed by law.

9.0 REQUEST FOR DISCLOSURE

Pursuant to Rule 194, Defendant is requested to disclose, within fifty (50) days of the service of this request, the information or material described in Rule 194.2. Further, Plaintiff requests disclosure of all documents, electronic information, and tangible items that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses.

10.0 PLAINTIFF’S NOTICE OF INTENTION TO USE PRODUCTION OF DOCUMENTS AT TRIAL.

Plaintiff, in accordance with Rule 193.7 of the Texas Rules of Civil Procedure, files this Notice of Intention to Use Production Documents at Trial. Plaintiff hereby gives notice to all parties that it intends to use at trial, or at any pre-trial proceedings, all documents produced by Defendant in response to discovery from any and all parties in this cause.

11.0 DAMAGES AND RELIEF REQUESTED

11.1 Brewer seeks that Defendant be served with process and appear herein and that, upon final hearing hereof, this Honorable Court enter a judgment for Brewer awarding the following relief:

- a. All available damages as set forth in the Texas Insurance Code;
- b. Actual and consequential damages;
- c. Punitive damages;
- d. Reasonable and necessary attorney's fees and costs;
- e. Pre-judgment and post—judgment as allowed by law; and

for such other and further relief as is equitable and just, both at law and in equity, as Brewer may, at the time of trial, show itself justly entitled.

Respectfully submitted,

THE HULSE LAW FIRM

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