

IN THE CIRCUIT COURT IN AND FOR
HILLSBOROUGH COUNTY, FLORIDA

CASE NO.:

NIRVANA ACUPUNCTURE & MEDICAL
CENTER LLC

Plaintiff,

v.

MAIN STREET AMERICA ASSURANCE
COMPANY,

Defendant.

**COMPLAINT
(Declaratory Judgment)**

Plaintiff, by and through its undersigned counsel, sues the Defendant and alleges:

GENERAL ALLEGATIONS

1. This is an action for Declaratory Judgment which exceeds \$30,000.00, exclusive of attorney's fees and costs.
2. At all times material, the Defendant is a corporation licensed to do business in the State of Florida and engaged in business which includes the handling and adjusting of insurance claims.
3. Defendant provides insurance coverage to Plaintiff with policy/claim number 01-BPG1372N-10002 ("the Policy").
4. On or about Mar 20, 2020, Plaintiff suffered loss of income due to the global pandemic of 2020.
5. The Policy was in full force and effect on Mar 20, 2020.

6. Plaintiff is not in possession of a full and complete copy of said policy of insurance but Defendant has a full and complete copy of the Policy.

7. Plaintiff has performed all conditions precedent or the conditions have occurred or been waived.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over the matters alleged herein.

9. Venue is proper in this Court because the acts and/or omissions complained of took place, in whole or in part, within the venue of this Court.

FACTUAL BACKGROUND

10. At some time before Mar 20, 2020, Defendant entered into a contract of insurance with the Plaintiff, whereby Plaintiff agreed to make payments to Defendant in exchange for Defendant's promise to indemnify the Plaintiff for losses including, but not limited to, business income losses.(hereinafter "Insured Property").

11. The Insured Property includes a business located in Florida which is owned, leased by, managed, and/or controlled by the Plaintiff.

12. The Plaintiff's business is located at 5002 S Macdill Ave , Tampa, FL 33,611. This address is listed as an Insured Property under the Policy.

13. Plaintiff faithfully paid policy premiums to Defendant, specifically to provide additional coverage under the Policy in the event of business closures by order of Civil Authority.

14. Under the Policy, insurance is extended to apply to the actual loss of business income sustained and the actual, necessary and reasonable extra expenses incurred when

access to the scheduled premises is specifically prohibited by order of civil authority as the direct result of a covered cause of loss to property in the immediate area of Plaintiff scheduled premises.

15. The policy is an all-risk policy.

16. The policy does not exclude coverage for losses sustained due to a pandemic.

17. Based on information and belief, the Defendant has accepted the Policy premiums with no intention of providing any coverage due to losses caused by a pandemic or civil authority.

18. The scientific community, and those personally affected by the pandemic, recognize the pandemic as a cause of real physical loss and damage.

19. Every country, including the United States has implemented the cleaning and fumigating of public areas prior to allowing them to re-open publicly due to the intrusion of microbials.

20. On March 1, 2020, the governor of Florida issued an order directing the State Health Officer to "declare a public health emergency in the State of Florida".

21. On March 9, 2020, the governor of Florida issued an order stating "I declare a state of emergency exists in the State of Florida".

22. On March 17, 2020, the governor of Florida issued an order directing:

a. "any licensee authorized to sell alcoholic beverages for consumption on premises that derive more than 50% of its gross revenue from the sale of alcoholic beverages shall suspend all sale of alcoholic beverages for thirty days from the date of this order."; and

b. "a restaurant shall immediately limit its occupancy to 50% of its current building occupancy.".

23. On March 20, 2020, the governor of Florida issued an order directing:

a. "all restaurants, bars, taverns, pubs, night clubs, banquet halls, cocktail lounges, cabarets, breweries, cafeterias and any other alcohol and/or food service business establishment with seating for more than ten (10) people within the incorporated and unincorporated areas of Broward County and Palm Beach County to close on-premises service of customers."; and

b. "All movie theatres, concert houses, auditoriums, playhouses, bowling alleys, arcades, gymnasiums, fitness studios and beaches shall close."

24. On March 20, 2020, the governor of Florida issued an order directing:

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."

25. As a direct and proximate result of the orders and the pandemic, Plaintiff has been forced to attempt to mitigate its losses by letting laying off employees and other mitigation efforts to prevent further loss.

26. The pandemic is physically impacting public and private property, and physical spaces in cities around the world and the United States. Any effort by the Defendant to deny the reality that the pandemic causes physical loss and damage would constitute a false and potentially fraudulent misrepresentation that could endanger policyholders and the public.

27. A declaratory judgment determining that the coverage provided under the Policy will prevent the Plaintiff from being left without vital coverage acquired to ensure the survival of the business. As a result of the Orders and the pandemic, Plaintiff has incurred, and continues to incur, a substantial loss of business income and additional expenses covered under the policy.

COUNT I:
DECLARATORY RELIEF

28. This is a count for declaratory relief.

29. Plaintiff re alleges all Paragraphs stated above as previously stated herein.

30. Plaintiff is in doubt as to the Plaintiff's rights under the contract of insurance, and requests this Court to declare its rights.

31. Plaintiff has a bona fide, actual and present need for a declaration of its rights as it pertains to the policy of insurance.

32. An actual controversy has arisen between Plaintiff and the Defendant as to the rights, duties, responsibilities and obligations of the parties. Plaintiff contends that the contract of insurance covers losses sustained due to the Orders and the pandemic. Defendant has denied Plaintiff's claim.

33. Resolution of the duties, responsibilities and obligation of the parties is necessary as no adequate remedy at law exists and a declaration of the Court is needed to resolve the dispute and controversy.

34. Plaintiff further seeks a Declaratory Judgment to affirm that the Orders trigger coverage because the Policy does not have an exclusion for a pandemic.

35. Plaintiff further seeks a Declaratory Judgment to affirm that the policy provides coverage to Plaintiff for any current and future civil authority closures due to physical loss or

damage from the Pandemic and the policy provides business income coverage in the event that the Pandemic has caused a loss or damage at the insured premises.

36. Plaintiff believes that Defendant did not process this claim in accordance with the policy of insurance.

37. Plaintiff requires this court to determine its rights under the contract accordingly.

WHEREFORE, Plaintiff requests this Honorable Court to declare Plaintiff's rights under the contract of insurance.

a. For a declaration that Plaintiff's sustained losses are covered under the contract of insurance.

b. For a declaration that the Orders trigger coverage because the policy does not have an exclusion for pandemic.

c. For a declaration that the Policy provides coverage to Plaintiff for any current and future civil authority closures of business due to physical loss or damage from the Pandemic under the Civil Authority coverage parameters and the policy provides business income coverage in the event that Pandemic has caused a loss or damage at the insured premises or immediate area of the insured premises.

d. For a determination of the amount of damages sustained due to the aforementioned loss.

e. A determination that the Defendant shall pay all sums due to the Plaintiff.

f. Award Plaintiff reasonable attorney's fees and costs pursuant to Sections 627.428 Florida Statutes, for the necessity of this action;

g. Grant any other relief this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury of all issues so triable as a matter of right.

Dated this Friday, September 8, 2020.

Respectfully Submitted,
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/s/

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