

**IN THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION**

JOHNSTON JEWELERS, INC.

a Domestic Corporation,
Plaintiff,

vs

Case No. _____

JEWELERS MUTUAL INSURANCE COMPANY, S.I.

a Foreign Corporation,
Defendant,

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW, the Plaintiff, JOHNSTON JEWELERS, INC., by and through its undersigned Attorney, and files this it's complaint against the Defendant, JEWELERS MUTUAL INSURANCE GROUP, and alleges:

JURISDICTION

1. The matter in controversy exceeds the sum of \$30,000.00 exclusive of interest, attorney's fees and costs.
2. Plaintiff, JOHNSTON JEWELERS, INC., was, at all times material to the allegations in this Complaint, a Corporation organized and existing under the laws of the State of Florida and engaged in the business of selling jewelry with a store located in Largo, Florida.
3. Defendant, JEWELERS MUTUAL INSURANCE COMPANY, S.I., is and at all times material to the allegations in this Complaint was a Corporation organized and existing

under the laws of the State of Wisconsin, having its principal place of business in Neenah, Wisconsin who issued a policy in Largo, Florida and was authorized and licensed to do business in the State of Florida as an insurer.

COMMON ALLEGATIONS

4. At all times material to this action, there was in existence, a policy of insurance issued by Defendant to Plaintiff, providing coverage to Plaintiff's building located at 10401 Seminole Blvd, Largo, Florida 33778. To the best of Plaintiff's information and belief, a copy of the subject policy is attached hereto as Exhibit "A" and is incorporated by reference herein. However this might not be the full and complete copy. Plaintiff would allege that the Defendant has a full and complete copy of the subject policy of insurance.

5. The subject insurance policy, among other things, provides coverage for loss of business income and extra expense caused by action of civil authority that prevents access to the insured premises as more specifically set forth in Form CP 00 30 06 95 which provides in pertinent part as follows:

. . .

**Gold Coverage Package
(Location Level)**

**IV. BUSINESS INCOME AND EXTRA EXPENSE –
CIVIL AUTHORITY MILEAGE INCREASE**

A. Paragraph A.5.I., Civil Authority, is deleted and replaced with the following:

i. Civil Authority. When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

(1) Access to the area surrounding the damaged property is prohibited by civil authority as a result of the damage, and the

described premises are within that area but are not more than 25 miles from the damaged property; and

(2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

Civil authority coverage for necessary Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

(1) Four consecutive weeks after the date of that action; or

(2) When your Civil Authority coverage for Business Income ends: Whichever is later.

6. The policy does define in the liability section of the policy “property damage” as “injury to tangible property, including all resulting loss of use of that property, and loss of use of tangible property that is not physically injured. “Data” is not considered tangible property.”

7. On or about March 25, 2020, the Pinellas County Board of Commissioners issued a Civil Authority Order closing non essential storefront businesses, all of which is more particularly described in the copy of said Order attached hereto as Exhibit “B” which is incorporated by reference herein.

8. Plaintiff alleges that Essentials Retreat Day Spa was likewise shut down due to the attached order which is located at 7865 Seminole Blvd, #201, Seminole, Florida 33772 which is within 25 miles of the insured location.

9. Plaintiff further alleges that this order from Pinellas County Board of Commissioners was in response to the state of emergency in Pinellas County which as outlined in the attached order was issued due to the threat of COVID-19 which continues to pose a threat to the public health as more specifically described in the order.

COUNT I – BREACH OF CONTRACT

10. Plaintiff re-alleges and incorporates allegations one (1) through nine (9) above.

11. Plaintiff suffered a loss of business income caused by the above mentioned action of civil authority that prohibited access to property near Plaintiff's property as well as Plaintiff's store because of loss of or damage to property caused by or resulting from the civil order which Plaintiff alleges is a covered cause of loss under the terms and conditions of the policy quoted above.

12. Under the terms and conditions of the subject policy, Defendant is obligated to pay Plaintiff's actual loss of business income and any other extra expense caused by the action of civil authorities pursuant to the terms and conditions of the subject policy.

13. Plaintiff submitted a claim for business income and extra expense losses caused by the above mentioned actions of civil authority to the Defendant.

14. By letter dated April 21, 2020, Defendant denied coverage for the subject claim. Attached as Exhibit "C" is a copy of the denial letter.

15. Because of Defendant's failure to pay Plaintiff's claim, Defendant has materially breached the terms and conditions of the subject policy.

16. All conditions precedent to recover under the subject policy have been performed by the Plaintiff or waived by the Defendant.

17. Because of Defendant's breach of the subject insurance policy, Plaintiff has had to retain the services of the undersigned attorneys and have agreed to pay the undersigned attorneys a reasonable fee.

WHEREFORE, Plaintiff, JOHNSTON JEWELERS, INC., demands judgment for damages, together with interest, costs and reasonable attorneys fees, pursuant to Section 627.428, Florida Statutes, together with such other and further relief which the Honorable Court may deem proper and demands trial by jury on all issues so triable by jury.

COUNT II – DECLARATORY JUDGMENT

18. Plaintiff re-alleges and incorporates allegations one (1) through nine (9) above.

19. This is an action for Declaratory Judgment to determine liability under the subject insurance policy pursuant to Chapter 86, Florida Statutes.

20. Plaintiff contends that the subject claim for business interruption is a covered cause of loss because the order of civil authority prevented access to Plaintiff's property and caused the business to be shut down.

21. Defendant denied the claim of Plaintiff alleging that the subject policy did not provide coverage for multiple reasons.

A. Physical Loss or Damage

22. Defendant's first basis for denial was that there was no direct physical loss or damage to property at the insured premises.

23. The subject policy under civil authority provides as follows:

**Gold Coverage Package
(Location Level)**

IV. BUSINESS INCOME AND EXTRA EXPENSE –

CIVIL AUTHORITY MILEAGE INCREASE

A. Paragraph A.5.I., Civil Authority, is deleted and replaced with the following:

i. Civil Authority. When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

(1) Access to the area surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than 25 miles from the damaged property; and

(2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

Civil authority coverage for necessary Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

(1) Four consecutive weeks after the date of that action; or

**(2) When your Civil Authority coverage for Business Income ends:
Whichever is later.**

24. Plaintiff alleges that this additional coverage only requires damage to premises next to Plaintiff's property by stating "[wh]en a Covered Cause of Loss causes damage to property other than property at the described premises". This clause does not require direct physical loss or damage to property at your (the insured) premises as alleged by the Defendant.

25. The above quoted policy provision is ambiguous and unclear as to whether or not direct physical loss or damage is required at the insured premises to trigger civil authority coverage and a reasonable interpretation of the policy should be that if property within 25 miles of the insured location suffers damage, not direct physical loss or damage, and a civil authority

prevents access to that property as well as the insured property, there is coverage for the business interruption loss.

26. Plaintiff contends that Defendant has erroneously construed the subject insurance policy and that Plaintiff is entitled to recover damages for business interruption due to civil authority.

B. No Covered Cause of Loss

27. Secondly, Defendant based its denial of Plaintiff's claim on the allegation that there was no covered cause of loss.

28. Plaintiff alleges that the closure by civil authority is a covered cause of loss. Plaintiff further alleges that the subject policy is an all risk policy which provides that the loss is covered unless specifically excluded.

29. Defendant sites to several exclusions which Plaintiff alleges do not apply to the subject loss. If the loss is not specifically excluded, then pursuant to the terms and conditions of the subject policy, the loss would be covered. Because closure of the business due to civil authority is not an excluded cause of loss, Plaintiff alleges the damage to both the damaged premises and the insured premises were caused by a covered cause of loss and therefore this claim should be covered.

30. The above quoted policy provision is ambiguous and unclear as to what should be considered a covered cause of loss and whether shut down due to order of civil authority is a covered cause of loss. A reasonable interpretation of the policy should be that if the loss is not excluded, then there is coverage for the business interruption loss.

31. Plaintiff contends that Defendant has erroneously construed the subject insurance policy and that Plaintiff is entitled to recover damages for business interruption due to civil authority.

C. Ordinance or Law Exclusion

32. Third, the Defendant basis the denial on the Ordinance or Law Exclusion in the subject policy. The subject policy exclusion the Defendant relies upon states as follows:

a. Ordinance or Law

(1) The enforcement of any ordinance or law:

(a) Regulating the construction, use or repair of any property; or

(b) Requiring the tearing down of any property, including the cost of removing its debris.

(2) This exclusion, Ordinance or Law, applies whether the loss results from:

(a) An ordinance or law that is enforced even if the property has not been damaged; or

(b) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property or removal of its debris, following a physical loss to that property.

33. Plaintiff alleges that this exclusion only applies to the building code or other applicable codes as it relates to the construction, building or renovation of buildings and does not exclude any orders for public health and safety issued by the Pinellas County Board of Commissioners.

34. The above quoted policy exclusion is ambiguous and unclear as to what is excluded and should be considered as only excluding costs associated with the increase cost of repair or rebuilding of an insured structure due to building code requirements of either the State or the County in which the structure is located. A reasonable interpretation would be that this exclusion only applies to building codes and does not exclude orders issued by the Pinellas County Board of Commissioners regarding the state of emergency due to COVID-19 and that there is coverage for the business interruption loss.

35. Plaintiff contends that Defendant has erroneously construed the subject insurance policy and that Plaintiff is entitled to recover damages for business interruption due to civil authority.

D. Virus or Bacteria Exclusion

36. Forth, the Defendant alleges that the loss is excluded due to the Virus or Bacteria Exclusion. This specific exclusion provides as follows:

EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART STANDARD PROPERTY POLICY

A. The exclusion set forth in Paragraph B. applies to all coverage under all forms and endorsements that comprise this Coverage Part of Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority

B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.

However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.

C. With respect to any loss or damage subject to the exclusion in Paragraph B., such exclusion supersedes any exclusion relating to "pollutants".

D. The following provisions in this Coverage Part or Policy are hereby amended to remove reference to bacteria:

1. Exclusion of "Fungus", Wet Rot, Dry Rot And Bacteria; and
2. Additional Coverage – Limited Coverage for "Fungus", Wet Rot, Dry Rot and Bacteria, including any endorsement increasing the scope or amount of coverage.

E. The terms of the exclusion in Paragraph B., or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Coverage Part of Policy.

37. Plaintiff alleges that this is the standard Insurance Services Office, Inc. (ISO) language which has been incorporated into Defendant's policy. Pursuant to the ISO themselves, this endorsement was only meant to exclude the cost of damages to either the insured location or the insured's products when a virus specifically infected the insured location. See the attached

ISO circular regarding this endorsement attached hereto as Exhibit “D”. Because there is no allegation that the insured property was specifically affected by the COVID-19 virus, this particular exclusion does not apply,

38. The above quoted policy exclusion is ambiguous and unclear as to what is excluded and should be considered as only excluding costs when a virus or bacteria affects the interior of the insured property or affects the product of the insured. A reasonable interpretation would be that this exclusion does not exclude orders by civil authority regarding COVID-19 because COVID-19 did not actually affect the interior of the insured location and that there is coverage for the business interruption loss.

39. Plaintiff contends that Defendant has erroneously construed the subject insurance policy and that Plaintiff is entitled to recover damages for business interruption due to civil authority.

E. Biological Hazard Exclusion

40. Fifth, the Defendant has alleged that the Biological Hazard Exclusion applies and therefore this loss is not covered. This exclusion states as follows:

NUCLEAR, BIOLOGICAL, CHEMICAL, AND RADIOLOGICAL HAZARDS EXCLUSION

This endorsement modifies insurance provided under the following

BUSINESS COVERAGE FORM

Section I – Property is amended as follows:

A. Paragraph B.1.d., Nuclear Hazard, is deleted and replaced with the following:

d. Nuclear, Biological, Chemical, and Radiological Hazards

(1) Nuclear reaction, nuclear radiation, radioactive contamination, biological contamination, or chemical contamination;

(a) Whether controlled or uncontrolled;

Or

(b) Whether caused by, contributed to, or aggravated by a covered peril; or

(c) Whether caused by a natural, accidental or artificial means; or

(2) The use, dispersal or application of pathogenic or poisonous biological or chemical materials whether actual, alleged or threatened; or

(3) The release of pathogenic or poisonous biological or chemical materials, or radioactive materials.

Loss caused by nuclear, biological, chemical, or radiological hazards is not considered loss caused by fire, explosion, or smoke. Direct physical loss by fire resulting from the nuclear, biological, chemical, or radiological hazard is covered.

This exclusion does apply to a loss involving the accidental spilling of chemicals used in the normal course of your jewelry operations, as covered under Accidental Spilling of Chemicals.

41. Plaintiff alleges that this endorsement was only meant to exclude losses due to nuclear or biological warfare or as a result of a nuclear accident. Plaintiff alleges that the COVID-19 virus was not a result of anything nuclear and was not released as a biological weapon. Because there is no allegation or proof that COVID-19 was a result of anything nuclear or is being used as a biological weapon, this particular exclusion does not apply,

42. The above quoted policy exclusion is ambiguous and unclear as to what is excluded and should be considered as only excluding nuclear weapons, nuclear accidents or biological weapons. A reasonable interpretation would be that this exclusion does not exclude orders by civil authority regarding COVID-19 because COVID-19 was not the result of a nuclear accident, a nuclear weapon or a biological weapon and that there is coverage for the business interruption loss.

43. Plaintiff contends that Defendant has erroneously construed the subject insurance policy and that Plaintiff is entitled to recover damages for business interruption due to civil authority.

44. Plaintiff is in doubt of its rights and obligations under the subject policy as to whether Defendant is required to pay the business interruption claim under the terms and conditions of the subject policy.

45. An actual controversy of a justifiable nature as to whether Plaintiff is entitled to recover business interruption damages under the subject policy exists between Plaintiff and Defendant involving the rights and liabilities of Plaintiff and Defendant under the policy of insurance attached hereto and Plaintiff is in doubt as to its rights under the subject policy.

46. The controversy existing between Plaintiff and Defendant may be determined by a judgment of this Honorable Court without the necessity of other law suits.

47. Plaintiff has no other adequate remedy of law.

48. Because of Defendant's wrongful denial of Plaintiff's claim, Defendant has materially breached the terms and conditions of the subject policy.

49. All conditions precedent to recovery under the subject policy has been performed by Plaintiff and their agent or waived by Defendant.

50. Because of Defendant's breach of the subject insurance policy, Plaintiff has had to retain the services of the undersigned attorneys and agreed to pay the undersigned attorneys a reasonable fee.

WHEREFORE, Plaintiff, JOHNSTON JEWELERS, INC., demands judgment declaring that Defendant, JEWELERS MUTUAL INSURANCE COMPANY, S.I., is required to pay Plaintiff the damages resulting from the above business interruption claim and that judgment be entered for Plaintiff's damages, together with interest, costs and reasonable attorneys fees pursuant to Section 627.428, Florida Statutes, together with such other and further relief which this Honorable Court may deem proper and demands trial by jury on all issues so triable by jury.

/s/ Ronald S. Haynes

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